

Award No. 966

Docket No. CL-978

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Miss Cecelia Friel be compensated for monetary loss suffered by her account of being denied the privilege of exercising her seniority rights to position No. 72-1-4 General Stenographer, rate \$5.90 per day, in General Superintendent's office at Pittsburgh, Pa."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties: "Due to consolidation of the office of Superintendent, Connellsville, Pa., with that of Pittsburgh, Pa., on February 1, 1933, Miss Friel's position of Stenographer in Superintendent's office at Connellsville was abolished. On January 30, 1933, she made application according to Rule 38 to displace a junior employe, L. M. Rubenstein, on position No. 72-1-4, General Stenographer, General Superintendent's office, Pittsburgh, Pa., rate \$5.90 per day, and was denied this privilege."

POSITION OF EMPLOYES: "Rule 38 reads as follows:

'Employees whose positions are abolished may exercise their seniority rights over junior employees holding permanent positions or temporary vacancies that have been bulletined as such. Other employees affected may exercise their seniority in the same manner.

'Employees transferred or promoted from one group to another (as established in Rule 1), will rank in such group from the date of transfer, but will retain their seniority and may exercise displacement rights in the group from which transferred or promoted.

'Employees affected by this rule shall file their application for position within five (5) days or forfeit this right.'

"There was no question as to the ability of Miss Friel to perform the duties of the position of General Stenographer and there is no reason to require the qualifications for the position of General Stenographer, which is a schedule position, to be contingent on the position of Secretary to General Superintendent which is a Personal Office Position, and can be filled by appointment whether permanent or temporary.

"The position in question had formerly been filled by a female employe, and on July 16th, 1938 Miss Friel was permitted to displace L. M. Rubenstein on this position and is now the incumbent of that position."

POSITION OF CARRIER: "Effective February 1, 1933, the offices of the Superintendents, located at Connellsville, Pa., and Pittsburgh, Pa., were

more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.

'(b) Vacancies or new positions of timekeepers and time clerks in each department; Transportation, Motive Power and Maintenance of Way in the several division accounting offices, shall be bulletined and the senior applicant appointed who is best qualified therefor through fitness and ability.'

"It will be noted under that rule assignments are based on seniority, fitness and ability, seniority to prevail when fitness and ability are sufficient. In this case the carrier contends that neither Miss Friel nor Miss Stafford were fitted to perform all of the work required of the position of General Stenographer in the office of General Superintendent at Pittsburgh and that no rule was violated in denying a female employe the right to displace a male incumbent of that position. It is the prerogative of the carrier to determine the fitness of employes for positions and it is generally conceded there are certain limitations in the field in which female clerical employes can be used. This was clearly recognized by your honorable board in its Award No. 324, the principle of which the carrier contends is analogous to the case in issue. The carrier, therefore, respectfully requests that this claim be denied."

There is in evidence an agreement between the parties bearing effective date of July 1, 1921.

OPINION OF BOARD: The record in this case discloses that the reason the carrier gave for not assigning the complainant employe to the position in question disappeared with the consolidation of the Wheeling, W. Va., and Pittsburgh, Pa., General Superintendent Offices in July 1936; that thereafter, through a reorganization of office forces, conditions changed with the result carrier admitted that Miss Friel possessed the necessary fitness for the position contingent upon her qualifying thereon.

Based upon all the facts and circumstances involved in this particular case, not establishing a precedent with respect to whether carrier's original action in denying Miss Friel the position in question was proper under the terms of the agreement, the Board decides that Miss Friel should have been placed on position No. 72-1-4, General Stenographer in the General Superintendent's office at Pittsburgh, effective July 1, 1936.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim should be sustained effective July 1, 1936.

AWARD

Claim sustained effective July 1, 1936.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1939.