

Award No. 1044

Docket No. CL-966

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of The Brotherhood that:

(1) The Carrier has violated and is continuing to violate Agreement rules when it permitted A. D. Walther, former Chief Clerk to Mechanical Superintendent at Dallas, Texas, to displace Clerk C. O. Sandefur with consequent displacement of other employes in that office, as of Nov. 1, 1937, assigned to schedule positions, and permitting A. D. Walther to continue on schedule position after having been disqualified on position of Chief Clerk to Mechanical Superintendent, and

(2) That all employes reduced to lower rated schedule positions or furloughed to inactive list account disqualified Chief Clerk A. D. Walther being permitted to exercise alleged displacement right in violation of rules Agreement, be restored to their former position and be retroactively compensated for all time lost."

EMPLOYEES' STATEMENT OF FACTS: "On Nov. 1, 1937, A. D. Walther, Chief Clerk to Mechanical Superintendent at Dallas, Texas, was disqualified as Chief Clerk and was permitted to exercise his alleged seniority, displacing C. O. Sandefur who was holding a schedule position, who in turn reduced in rank the following employes in seniority order.

Name	Rate Before Displaced	Rate After Displaced
1. C. O. Sandefur	\$7.27	\$6.59
2. D. K. Ball	6.59	5.77
3. A. B. Welch	5.77	5.67
4. W. L. Hicks	5.67	5.41
5. File Clerk	5.41	Furloughed

"Former Chief Clerk, A. D. Walther, entered service with the Texas and Pacific Railway Company as Chief Clerk to Mechanical Superintendent at Dallas, Texas, on June 1, 1914, which position is considered and treated as excepted from the rules of the Agreement. He remained on that position until July 1, 1917, at which time he was promoted to Assistant to General Manager, also an excepted position, and remained on that position until May 1, 1918; was then promoted to General Storekeeper at Marshall, Texas on May 1, 1918, remaining on that position until July 1, 1921. He was discharged from this position for cause. Mr. Walther was then out of service of the Texas and Pacific Railway Company from June 1, 1921 until September 1, 1921. He returned to service of the Texas and Pacific Railway

"It is affirmed that all data submitted herein in support of our position has heretofore been presented to the Organization and is hereby made a part of the question in dispute."

OPINION OF BOARD: While the record contains some argument as to seniority standing of A. D. Walther, that question is not now involved. The question is whether or not Mr. Walther should have been permitted to displace a regularly assigned employe, or should have reverted to the extra board and secured regular assignment under provisions of Rule 6. There is dispute between the parties as to the reason for his leaving the excepted position. However, in the opinion of the Division, the preponderating evidence indicates that he voluntarily relinquished the excepted position, and, under this agreement and under such circumstances, an employe occupying a position coming under the agreement could not voluntarily relinquish same and displace another regularly assigned employe. In these circumstances A. D. Walther should not have been permitted to displace a regularly assigned employe. Under the facts and circumstances of this case and subsequent developments, claims for compensation will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 A. D. Walther should not have been permitted to displace a regularly assigned employe and claims for compensation are denied.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of March, 1940.