

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that carrier violated the rules of the Clerks' Agreement when on August 16, 1938, it permitted John Ebner, who held seniority under the Clerks' Agreement, but who was regularly assigned to a position wholly excepted from the Clerks' Working Agreement (Chief Clerk to Master Mechanic, Temple, Texas) to voluntarily vacate his excepted position and displace James Ming from a position covered by the Clerks' Agreement (Position No. 12, Clerk, Master Mechanic's Office, Temple, Texas, daily rate of pay \$6.36); and

"Claim that Mr. Ming shall be restored to Position No. 12 and that all employes involved in or affected by said violation of rules shall be compensated in full for monetary losses sustained as a result thereof."

EMPLOYEES' STATEMENT OF FACTS: "Temple, Texas is Division point on the Southern Division of the Gulf Lines. Master Mechanic's office located at Temple is a seniority district; other offices on the Division under the jurisdiction of the Master Mechanic at Temple constitute another and separate seniority district. Effective July 2, 1938, John Ebner, seniority date August 12, 1912, was promoted from Position No. 12 to Position of Chief Clerk to Master Mechanic. Position from which Ebner was promoted is covered by the Clerks' Agreement. Position to which he was promoted is not. Ebner was confined to the Company Hospital at Temple as of the date promoted and did not assume the duties of his new position until July 5th.

"James Ming, with seniority date May 5, 1913 in seniority district embracing 'Outside Offices,' was transferred to the Master Mechanic's office to fill vacancy on Position No. 12, created by Ebner's promotion. Under the rules Ming forfeited his seniority in district from which transferred and established a new date in the Master Mechanic's office of July 2, 1938, the date he was assigned to Position No. 12. On or about August 11, 1938 Mr. Ebner informed the Master Mechanic he would like to give up the position of Chief Clerk and return to Position No. 12, thus displacing Mr. Ming. The next day, August 12, 1938, the Master Mechanic conferred with the Mechanical Superintendent on the matter in the latter's office in Galveston, Texas and arrangements were made to replace Ebner on Position of Chief Clerk with an employe from another seniority district. The following day, August 13, 1938, a conference was held in Temple: Assistant General Chairman Harris for the Brotherhood; Mr. Brownell, Chief Clerk to Mechanical Superintendent, Mr. Mozley, Master Mechanic for the carrier. Mr. Ebner and Miss Artie Smith, clerk in the Master Mechanic's office, were also present. Mr. Harris stated the position of employes in the matter and informed carrier representatives, punitive claims would be filed if any

Article III, Section 19-b:

'Employes hereafter promoted or transferred to an excepted position shall retain their seniority rights and continue to accumulate seniority in the seniority district from which promoted or transferred.'

"The Carrier does not see that this rule is pertinent to the facts in this claim. There is no dispute as to the retention of seniority by Mr. Ebner; the dispute is as to his right to use that seniority. The Carrier submits that its action in this dispute was completely in accord with section 19-(b) of Article III.

"The facts of record definitely, clearly and conclusively prove that Mr. Ebner was displaced under the rule, and that the rule does not contemplate nor contain restrictions as suggested by the employes. The statement that Mr. Ebner's action created a vacancy and need for replacement is one of words and not of facts, inasmuch as the management is recognized as the sole and only judge as to whether an excepted position is to be filled.

"The Board will please understand that once an occupant of an excepted position relinquishes it, he holds no rights under any schedule agreement or any equity to return to the excepted position or to that status.

"Even the equities in this case are in favor of Mr. Ebner as against Mr. Ming. Seniority is confined to districts. Mr. Ebner's seniority in the district dates from August 12, 1912, Mr. Ming's from July 6, 1938, almost twenty-six (26) years later. Mr. Ming's status was that of a comparatively new employe whose fitness and ability, to say nothing of his seniority, were certainly not comparable with that of an employe twenty-six (26) years his senior in seniority rights who had for many years occupied the position from which he displaced Mr. Ming.

"There is no escaping the fact that Mr. Ming suffers hardship by reason of the correct application of the schedule. Individual hardships do arise, and necessarily, from the rigid application of any general set of rules regardless of the fairness with which they are drawn and the general equity of the results that they obtain. The Carrier recognized and recognizes the hardship on Mr. Ming occasioned by the rules and nothing else, in the circumstances here presented; and the Carrier's representatives suggested to the employes' representatives that arrangements should be made by agreement to restore Mr. Ming to his former seniority and permit him to go back to his Brownwood position. Such a solution to the problem would have been the fairest to all concerned but the petitioner flatly refused all overtures in this direction for some reason unknown to us. This explanation is made not with the view that it is technically relevant, but to dispel any possible inference attempted to be drawn that the Carrier has failed to discharge any of its obligations, legal or moral.

"The Carrier submits that the claim of the employes is not supported by any rule in the agreement but, on the other hand, is refuted by the very rules cited by them in support of their position.

"The data and argument in support of the Position of Carrier have been presented to the duly authorized representatives of the employes."

There is in evidence an Agreement between the parties bearing effective date of December 1, 1929.

OPINION OF BOARD: The parties are in agreement that the position of Chief Clerk to Master Mechanic, Temple, Texas, is excepted from the Agreement; that Mr. Ebner retained his seniority under Article 3, Section 19-b. Question involved is whether or not he could exercise displacement rights under Article 3, Section 19-e.

The record shows he voluntarily relinquished position of Chief Clerk to Master Mechanic and in the opinion of the Board he was not displaced

from that position within the meaning of Article 3, Section 19-e. Mr. Ebner, not having displacement rights, should not have been permitted to displace Mr. Ming, and the latter is entitled to return to his former position with pay for wage loss less amount earned in other employment.

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 Mr. James Ming shall be restored to his former position and compensated for wage loss less amount earned in other employment.

AWARD

Claim sustained as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1940.