

Award No. 1244
Docket No. CL-1276

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Harris L. Danner, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

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

"(1) The Carrier violated agreement rules when it failed and refused to eliminate the name of William T. Purcell, a Locomotive Fireman, from the Minneapolis Store Department Group 2 Roster for year 1940, and

"(2) That bulletin assignment of Fireman Purcell to position and Store Helper at Minneapolis Store, dated June 10th, 1939, be canceled, and

"(3) The Carrier shall be required to reimburse Maurice Ryder for wage losses sustained as a result of said rules violation."

EMPLOYEES' STATEMENT OF FACTS: "Under date of June 5th, 1939, Local Storekeeper Gamble issued bulletin advertising for bids a vacancy on position of Group 2 Store Helper, rate 56¢ per hour, at Minneapolis Store.

"Two applications were submitted for this vacancy by:

"1. Maurice Ryder, holding assignment as Group 2 Helper, Rate \$2.43 per day, at Stationery Store, located in General Office Building in St. Paul, Minnesota.

"2. William T. Purcell, a Locomotive Fireman, listed as No. 88 on First District Eastern Division Rank List of Firemen as of January 1st, 1939, with seniority date of July 14th, 1928.

"NOTE: Mr. Purcell is listed on the roster of January 1st, 1940, superseding roster of January 1st, 1939, with same number and similar date.

"Minneapolis Store Department Group 2 Seniority District had no furloughed employees and no bids were submitted for the advertised vacancy by employees already assigned in that district.

"Minneapolis Store Bulletin dated June 10th, 1939, assigned Fireman Purcell to the vacancy, disregarding the bid submitted by Maurice Ryder, who, under the Rules Agreement, was entitled to the assignment.

"Minneapolis Store Bulletin dated February 6th, 1938, assigned William T. Purcell, a Locomotive Fireman, to a vacancy of Store Helper.

"The Carrier would call your attention to Item 2 in the claim of the Committee in which they ask your Board to cancel the bulletin assignment of Fireman Purcell to position of store helper at Minneapolis store. As the Carrier understands this request, it is that the Board arbitrarily deny to Mr. Purcell the position as Store helper which he secured on a proper bulletin, and that your Board arbitrarily dismiss Mr. Purcell from his position. Such a request is contrary to the letter agreement between Mr. Nicoles and Mr. Flynn, dated November 10th, 1936, Carrier's Exhibit No. 9. Further, it is the position of the Carrier that it could not arbitrarily take this action, and it is likewise equally true that your Board cannot take this action.

"It is apparent that the Committee in this case does not represent Mr. Purcell, as it is seeking to have him removed from the seniority list of the Store Department without giving him an opportunity to select or designate as to what seniority list he wishes to remain on, and it is the Carrier's understanding that in a question affecting an employee's seniority who is not represented by the Organization holding the contract of that class on this property, such employee must be made a party to the case and given an opportunity to be present and be heard in any proceedings thus affecting his seniority. The Carrier would, therefore, ask that your Board take cognizance of this condition so that the rights of Mr. Purcell may not be voided and that he be notified of the time and place of hearing in this case.

"The Carrier would call to your attention the date of B. R. C. Claim 46, as indicated by Carrier's Exhibit No. 1, and particularly to Item 3 thereof—such date of claim being February 20, 1940. Therefore, under the provisions of Rule 26, no penalty payment in this claim could be awarded prior to February 13, 1940—and, as in this case, on February 13, 1940 the hourly rate of the assigned position of Maurice Ryder at the Minneapolis Store was, and has been since November 1939, the same as the hourly rate of Mr. Purcell at the Minneapolis Store. It would, therefore, be the Carrier's position that Part 3 of Claim 46 is defeated—first: from June 4, 1939 to February 13, 1940 by reason that no claim for penalty payment was made as provided in Rule 26; and, second: for the reason that after November 1939 both men having been paid the same hourly rate, there could be no wage loss, and the claim for wage loss was moot at the time and on the date on which claim was first presented—i. e., February 20, 1940.

"The Carrier would request, first, that your Board refuse to take jurisdiction of this case; and, second, that if the Board does take jurisdiction, Mr. W. T. Purcell, Store helper at the Minneapolis store, Chicago, St. Paul, Minneapolis & Omaha Railway Company, Minneapolis, be made a party to this case—that he be furnished copy of submission made by the parties to this case and that he be given an opportunity to be heard at such time and place as this case is set for hearing; and, third, that the claim be denied under the rules and facts as indicated in the Carrier's submission.

"All data in support of the Carrier's Position in connection with this claim have been presented to the duly authorized representative of the employees, and is made a part of the particular question in dispute.

"An oral hearing is desired."

There is in evidence an agreement between the parties bearing effective date of July 16, 1926.

OPINION OF BOARD: There is no dispute as to the facts of this case. Maurice Ryder held assignment as Group 2 helper at Stationery Store at St. Paul, Minn. William T. Purcell, locomotive fireman, was listed as No. 88 on First District Eastern Division Rank List of Firemen as of January 1, 1939, with seniority date of July 14, 1928. Bids for vacancy in position of Group 2 store helpers at Minneapolis Store were advertised June 5, 1939. Bid was submitted by Maurice Ryder but on June 10, 1939 the position was assigned to Fireman Purcell.

The contention here is: that under the current agreement employes cannot hold seniority rights on two different craft rosters; that when the bid of Ryder was disregarded and the position assigned to Purcell, this was the same as giving the position to a non-employee insofar as the current rules apply to clerical, office, station, and storehouse forces.

The question of whether notice should be given to the employes affected has been disposed of by agreement in this case to follow the decision rendered in Award 1193.

The carrier also raises the question that this dispute has not been handled in the manner required by the Railway Labor Act.

The question of whether or not an employe could hold seniority rights on two different craft rosters has long been in dispute between the carrier and the employes on this particular railroad. The record shows that correspondence on this subject passed between the parties as far back as 1927. In addition, there have been numerous conferences between the parties. All parties were fully informed as to the nature of the contention and as to the claims of the craft that employes could not appear on two different rosters at the same time.

Interpretations of the rules were made by officers of the company. Numerous conferences were held on the subject and a reasonable effort was made by both parties to reach an agreement.

The carrier does not show that it has been prejudiced by the manner in which it has been handled or that it has suffered any detriment; therefore, it is our opinion that this Board has jurisdiction to hear this matter on its merits.

However, this conclusion is based solely on the record in this case. The requirement that disputes should be handled in the usual manner before being submitted to the Adjustment Board should be obeyed for the reason that it promotes orderly disposition of business and it is to the best interest of both parties that all reasonable effort be made to settle the controversy on the property before appealing to the Adjustment Board. Some other record might not have the essential element to give the Board jurisdiction and another referee might with good judgment say that the Board had no authority to hear the dispute.

As to the main question in dispute: the employes rely upon Rules 3, 4, 5, 6, 15, 16, 17, 18, and 34 of current Agreement dated and effective July 16, 1926 and Memorandum Agreement dated Dec. 20, 1938 effective Dec. 31, 1937 modifying 3rd paragraph of Rule 15 for employes at St. Paul, Minn., Sioux City and Duluth stations. The employes insist that these rules have been interpreted by the parties to mean that an employe cannot hold seniority rights on two different craft rosters or even two rosters under the agreement. The earlier interpretation was made Dec. 6, 1928 by J. J. Prentice, Superintendent. B. E. Culver, yard clerk at Sioux City, was granted a leave of absence for 60 days to try out a position as switchman. The Brotherhood of Railway and Steamship Clerks objected that this employe could not accumulate seniority on two different lists in different departments at the same time. Mr. Prentice wrote the Agent and General Yard Master as follows:

"I talked this over with Mr. Beamer today and he stated so far as this particular case is concerned, he would go along with it inasmuch as arrangements have already been made and I stated to him that in the future we would not do any more of this. IN OTHER WORDS, IF A CLERK WANTS TO TAKE A JOB SWITCHING AND WE SEE FIT TO EMPLOY HIM AS SWITCHMAN IT MAY BE DONE BUT WHEN HE BECOMES A SWITCHMAN HE NO LONGER IS A CLERK." (Capitals ours.)

The matter was again brought up on July 13, 1932 by Mr. F. E. Nicoles, Asst. to Vice President and General Manager of the carrier. He asked that he be cited to the rules relied upon by the craft in this matter. A reply was made by the General Chairman as follows:

"Rule No. 3 establishes seniority on the seniority district and in the class to which assigned. Rule No. 19 provides for employes going from one roster and district to another but does not protect seniority in any way, but says that they shall rank from date of transfer, except the provision as provided in Rule 15. The provision was put in the rules to protect the senior employe as it protects his seniority where he originally started, and that is all. Such rights may be exercised under certain conditions and when such rights are exercised such employe has no rights in any other class than in which he is working. When an employe does return to the district or class where he started he takes with him his accumulated seniority as his original date can never be changed.

"There have been many cases like this during the past two years and no one has ever questioned or contended that they could hold seniority in two classes except as provided in Rule 15.

"If the above is not clear I would be pleased to confer with you at any time you may mention."

On Oct. 27, 1936 General Chairman Flynn again protested to Mr. Nicoles on account of one Johnson being carried on Minneapolis office seniority roster with date of Jan. 12, 1920 and on Switchmen's seniority roster with date of Jan. 24, 1935. Mr. Flynn wrote that this protest was made on account of violation of agreement in that Johnson was accumulating seniority on two rosters at one time. On Nov. 10, 1936 Mr. Nicoles answered the request and protest of Mr. Flynn stating that he had gone into the question; that he could not agree with Mr. Flynn on some of the matters but stated:

"* * * The granting of leave-of-absence, therefore, is justifiable, and in my opinion, fair and reasonable; however, at the end of the period of such leave-of-absence to any clerks for that purpose, I WOULD TAKE THE POSITION THAT SUCH CLERK SHOULD DECLARE HIS DESIRES AS TO WHETHER OR NOT HE WANTED TO BE A CLERK OR A SWITCHMAN, AND SHOULD THEN ABIDE BY THAT DECISION—AND THAT WILL BE THE PRACTICE ON THIS RAILROAD IN THE FUTURE. Inasmuch as Mr. Johnson has returned to his position as yard clerk, he will be permitted to remain there, but if he desires to go into the switching service, HE SHOULD RESIGN AS A CLERK." (Capitals ours.)

The carrier has seen fit to make this interpretation of the rules. The employes, having adopted this interpretation, must also abide by it. The interpretation, as we view it, is that the Railroad will not allow an employe to be on the rosters in two different crafts at the same time, but if the employe is on two rosters he is entitled to elect on which he will remain.

We therefore hold that William T. Purcell cannot hold seniority rights on the Minneapolis store department Group 2 roster and also seniority rights as a locomotive fireman and that he is required to elect on which roster he will remain; that the carrier violated the current agreement by allowing the name of William T. Purcell to appear on two different rosters at the same time to the detriment of Maurice Ryder.

We also hold that the carrier shall reimburse Maurice Ryder for wage losses and that such reparation shall be retroactive to August 24, 1939.

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 employees involved in this dispute are respectively carrier and employees 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 said Maurice Ryder shall be reimbursed for wage losses suffered as a result of the above violation from August 24, 1939; that William T. Purcell be required to elect upon which roster he will remain and that if he refuses to elect within 10 days after receipt of notice of the promulgation of this award the matter shall be again submitted to this Board for determination of this particular question.

AWARD

Claims sustained in accordance with the Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1940.