

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY

W. R. Kenan, Jr., and S. M. Loftin, Receivers

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

"Mr. H. K. Pierson shall be restored to position identified as Position No. 8, File Clerk, and reimbursed for all monetary loss sustained account having been removed therefrom on March 1, 1938, in violation of his seniority rights and the rules of the current working agreement."

EMPLOYEES' STATEMENT OF FACTS: "1. On January 1, 1938, Mr. H. K. Pierson was the regularly assigned incumbent of Position No. 8, File Clerk, in office of the Division Superintendent, New Smyrna Beach, which position was subject to the revised agreement which became effective on that date.

"2. The Carrier, on March 1, 1938, arbitrarily removed Mr. Pierson from his position without justification and without compliance with any rules of the revised agreement.

"3. Mr. Pierson was regularly assigned incumbent of the position in question as a result of exercise of seniority rights, and such seniority rights entitled him to hold said position unless and until displaced by a senior employe, or removed therefrom as an act of discipline, which could only be accomplished in accordance with the rules covering discipline matters."

CARRIER'S STATEMENT OF FACTS: "1. The present agreement between the Railway and the Brotherhood of Railway and Steamship Clerks became effective January 1, 1938. Rule 1 contains a statement of certain excepted positions to which the rules of the agreement are not applicable, because the preponderance of the duties of those positions are of a supervisory or confidential nature. Included in the statement of excepted positions is the position of Confidential Clerk-Stenographer, in the Office of the Division Superintendent at New Smyrna Beach.

"2. During the negotiations leading to the adoption of the January 1, 1938 agreement, much discussion was devoted to the question of excepted positions, and the statement of such positions now appearing in the agreement, together with several other rules of the agreement, developed through mediation proceedings conducted by Mr. Otto S. Beyer, Member, National Mediation Board. The Carrier insisted upon including in the list of excepted positions two stenographic or clerical positions in the Office of the Division

OPINION OF BOARD: It appears that at the time the controlling agreement was made one Pierson occupied a position known as File Clerk in the office of the Division Superintendent at New Smyrna Beach, a position so recognized at the time the revised—current—agreement was entered into. It further appears that during the preliminary stages of the negotiations held in relation to the present agreement, the carrier requested that three positions in the superintendent's office, namely, Chief Clerk, Confidential Stenographer and File Clerk, be excepted therefrom. The brotherhood would not consent to excepting the position of File Clerk from the agreement, and thereupon the carrier submitted a second draft in which the position of File Clerk was omitted, and in lieu thereof the position of Confidential Clerk-Stenographer was substituted. To that proposal the brotherhood agreed, and thus changed, the exceptions named became a part of the prevailing agreement, executed December 20, 1937, and effective January 1, 1938. It also appears that the position known as File Clerk in the superintendent's office was contemplated in an earlier agreement which the one of January 1, 1938 superseded, and Pierson was the occupant thereof when the new agreement was negotiated. The agreement provided: "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rates of pay or evading the application of these rules." Notwithstanding the above provision in the old agreement, and the provisions in relation to excepted positions in the new agreement, it seems that December 31, 1937, the carrier renamed the position of File Clerk and called the position Confidential Clerk-Stenographer, the designated title of an excepted position, and assigned Pierson thereto, who was permitted to occupy it from January 1, 1938 to March 1, 1938, when he was advised that his services there would not be necessary and was told to exercise his seniority under the rules.

The applicable rules adequately appear above. We believe there was violation of the agreement. See Awards Nos. 139, 440, 631, 751, 752, and 754.

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 the position in dispute, without regard to how it may be titled, is within the scope of the agreement, and the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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