

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

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

"(1) Section (2), Article III, of the Clerks' Agreement permits and provides for the establishment of a seniority date as of the date pay starts for employes in seniority classes 2 and 3, and

"(2) That Class 2 seniority date of Leslie E. Cameron, Henrietta, Mo., shall be corrected to be May 6, 1937."

EMPLOYES' STATEMENT OF FACTS: "On May 6, 1937 position of station helper, Henrietta, Missouri was advertised for bids from employes holding seniority in clerical Class 2. Cameron, who held no seniority in any class but who had been hired to perform relief work, was assigned to the position for the period of advertisement.

"No bids were received from employes holding seniority in Class 2. Cameron was permanently assigned to the position and bulletin notice of the assignment was posted on May 17, 1937. He was given a seniority date in Class 2 as of the date assigned by bulletin, viz., May 17, 1937."

CARRIER'S STATEMENT OF FACTS: "May 6, 1937 Leslie E. Cameron, who had not started any class 2 seniority, was placed on temporary vacancy, position of Station Helper at Henrietta, Missouri, a Class 2 position. This position was advertised for bids on May 12, 1937 and as no employe having seniority in Class 2 bid for the temporary vacancy, Cameron was regularly assigned to same by bulletin dated May 17, 1937.

"Cameron was given a Class 2 seniority date under the Clerks' Agreement starting with May 17, 1937."

POSITION OF EMPLOYES: "Employes contend Article III, Section 2 of current agreement bearing effective date of December 1, 1929, is in violation. We quote the rule for ready reference:

"Section 2. Seniority begins at the time the employe's pay starts, on the seniority district and in the class to which assigned, except that seniority of students and apprentices shall date from time qualified and awarded regular positions. Non-clerical employes accumulate clerical seniority only when regularly assigned to a clerical position."

as to this carrier's position with respect to the starting of seniority of class 2 employees. The system chairman was advised by letter on May 6, 1930 as follows:

'Further, class 2 seniority starts only as of the date the employee is permanently assigned to a class 2 position irrespective of whether hired to fill such a position or promoted thereto.'

"Incidentally we have considered that any employee awarded an advertised vacancy or position in class 2 thereby established class 2 seniority and by so doing permanently entered the ranks of class 2 seniority holders subject to the loss of such seniority only by the operation of the schedule rules involved.

"The proposal of the organization to give Cameron a class 2 seniority date of May 12, 1937 contemplates giving class 2 employees a decided advantage in the establishment of seniority over those who stand to establish seniority in class 1. As evidence of the obvious unfairness of such a proposal the carrier wishes to cite the provisions of the procedure governing the establishment of seniority in class 1 by non-clerical employees which became effective October 1, 1930 by agreement with the system chairman of the Association of Clerical Employees, the Organization holding the contract at that time. The agreed upon procedure reads as follows:

'Where separate seniority rosters are maintained for class 1 and class 2 employees those employees now in service and who have not established clerical or class 1 seniority and those hereafter hired for clerical positions will establish clerical or class 1 seniority when regularly assigned to a clerical position, including temporary vacancies of more than thirty (30) days known duration (section 10-b of Article III) and temporary positions lasting more than ninety days which latter then became temporary vacancies (section 11 of Article III) provided the employee is retained on the temporary position after it becomes a temporary vacancy in which event clerical or class 1 seniority will date from the date placed on the temporary position.'

"The granting of the request of the organization in this specific case would not only be contrary to the plain wording and intent of the rule as it is written into the agreement but would also be a rank discrimination against those employees whose seniority has been established over a period of many years in accordance with the wording and accepted interpretation of the rule as outlined in the position of the carrier.

"For the reasons set out herein it is the position of the carrier that the class 2 seniority date of Leslie E. Cameron has been properly established and that if the organization desires some other method used in the establishment of seniority for class 2 employees that is something for agreement thru negotiation when the agreement is open for revision."

OPINION OF BOARD: The question presented by this claim, which requires an interpretation of Article III, Sec. 2 of the controlling Agreement, is this: "Does it require both the beginning of pay and a regular assignment to a Class 2 position in order that the employee may establish seniority in the class to which he is newly assigned."

Article III, Sec. 2 reads as follows:

"**SENIORITY DATUM.** Seniority begins at the time the employee's pay starts, on the seniority district and in the class to which assigned, except that seniority of students and apprentices shall date from time qualified and awarded regular positions. Non-clerical employees accumulate clerical seniority only when regularly assigned to a clerical position."

The initial declaration of the Rule is that "seniority begins at the time the employee's pay starts." The claim of the carrier cannot be allowed,

that what follows imposes, as condition precedent to the beginning of seniority, that the employe be also "regularly assigned" to the position. That interpretation would make mere surplusage the contextual clauses relative to students, apprentices and non-clerical employes. The requirement as to both of the latter groups, that regular positions be awarded or assigned them as condition precedent to seniority rights, is persuasive that such condition was not intended to be attached to any other than the two groups specifically mentioned.

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 controlling rule was violated in fixing May 17, 1937 rather than May 6, 1937 as his seniority date in Class 2.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.