

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul W. Richards, Referee

PARTIES TO DISPUTE:

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

LITCHFIELD AND MADISON RAILWAY COMPANY

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

"(1) Carrier violated and continues to violate the rules of our agreement by denying Clerk A. L. Mays the right to displace Clerk E. L. Brunk on position of Rate Clerk, at East St. Louis, Illinois, and

"(2) That Clerk Mays shall now be assigned to such position, rate \$6.40 per day and be paid for wage losses suffered by reason of such violation of our agreement, and by Carrier's arbitrary action in placing him on the extra list, and

"(3) That any clerk affected by proper placement of Clerk Mays be accredited displacement rights under the provisions of our agreement."

There is in evidence an agreement between the parties bearing effective date of October 1, 1938.

EMPLOYEES' STATEMENT OF FACTS: "A. L. Mays and E. L. Brunk, both clerks, are employed in the same seniority district and included on the same seniority roster, Mr. Mays' clerical date being May 19, 1930, and Mr. Brunk's clerical date being June 12, 1934.

"Due to Mr. G. A. Handlon, the General Manager, taking a leave of absence account of physical condition and eye trouble, Mr. W. F. Thomas, carrying the title of Terminal Train Master, whose duties are ordinarily and commonly those performed by Yard Master, was assigned the duties of the General Manager with title as Acting General Manager, effective as of August 7, 1939.

"Mr. P. H. Roseberry, with title of Chief Yard Clerk, was assigned the duties of Terminal Train Master with the title of Acting Terminal Train Master, effective as of August 6, 1939.

"The position of Terminal Train Master is not under the scope of Clerks' Agreement on the property.

"The position of Chief Yard Clerk is not an expected position, and is covered by the scope of Clerks Agreement.

"On August 3, 1939, Mr. P. H. Roseberry made application for an indefinite leave of absence from his regular assigned Chief Yard Clerk's position due to the contingency of Mr. G. A. Handlon's leave of absence being more or less than thirty days' duration.

OPINION OF BOARD: The complaint is that Clerk Mays was wrongfully denied the right to displace Clerk Brunk as rate clerk. The carrier affirms that it has always allowed an employe to exercise his seniority privilege when his **regular assigned position** has been abolished. (Emphasis is the Carriers.) But, says the carrier, in the instant case there was no such privilege that could be exercised by Mr. Mays, because the abolished position on which at the time of the abolishment he was working, had been bulletined, bid on, and accepted by Mr. Mays, as a temporary assignment. Carrier urges it was not a regular assigned position, and consequently its abolishment did not confer on Mr. Mays the privilege of displacing Mr. Brunk, though the latter was Mr. Mays' junior in seniority.

Aforementioned position had been bulletined on August 11, 1939, as "Temporary combination Group 1 Job and Night Yard Master, vacant August 14." Being the successful applicant Mr. Mays was assigned to the job by bulletin on August 15th. He worked the job until by bulletin it was abolished as of November 1, 1939. Thereupon he sought to displace Mr. Brunk.

The position Mr. Mays was working up to November 1, 1939, was one the carrier had agreed to bulletin. Paragraphs (f) and (g) of Rule 10 of the agreement in evidence compel that conclusion. In this agreement to bulletin are discoverable no agreed-upon classifications or distinctions between positions or vacancies that must be bulletined. But as a class in themselves they are distinguished in paragraphs (f) and (g) from positions or vacancies of thirty days or less duration. The latter "shall be considered temporary" as stated in paragraph (g) and constitute something apart from the class that must be bulletined. There is no agreed overlapping, nor can any be reasonably inferred. Such being the character of the position as fixed by the agreements of the parties, it was unaffected by phraseology the carrier chose to use in the bulletin. Nor does the record establish that in this particular case any new agreement was made changing the agreements in evidence. It is the opinion of the Division that the claim should be sustained.

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 the denial of claimant's request to displace Mr. Brunk was violative of his seniority rights under the rules in evidence.

AWARD

Claims (1), (2), (3), sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of June, 1941.