

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE BROOKLYN EASTERN DISTRICT TERMINAL

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that: (1) The Carrier violates the meaning and intent of existing rules by refusing Alfred S. Kelly, Jr., with seniority date 9-16-35, the right to exercise seniority to position held by Grace Hoffman whose seniority date is 12-8-36 and

(2) That Alfred S. Kelly, Jr., shall be permitted to exercise his seniority to the position held by Grace Hoffman and he shall be compensated for the difference between what he earns and the rate of 35.40 per week, retroactive to April 16, 1940."

EMPLOYEES' STATEMENT OF FACTS: "On March 26, 1940, the position held by Alfred S. Kelly, Jr., with rate of \$27.70 per week, was abolished. Mr. Kelly requested and was granted leave of absence. He returned from leave of absence and reported for work on April 16th, 1940. In accordance with existing rules he made request, in writing, to exercise seniority to a position held by a junior employe. The position he desired to exercise seniority to required the operation of a Comptometer Machine. Mr. Smith the agent in charge refused to permit the exercise of seniority by Mr. Kelly to the position held by Grace Hoffman. Mr. Kelly was not given a chance to qualify or work the position in question and under protest was compelled to exercise seniority to another position with rate of \$25.50 per week.

"The Carrier, disregarding Mr. Kelly's contentions that he was fully qualified to operate a Comptometer Machine, denied him the right to exercise seniority contending that he had no experience as a Comptometer Operator.

"Mr. Kelly had been attending a course of instruction in the operation of a Comptometer Machine prior to the date his position was abolished and completed the course by final tests on April 13, 1940. The Comptometer School he attended is conducted by Felt & Tarrant Mfg. Co. and located at 299 Broadway, New York City. A certificate of graduation is submitted herewith and marked Exhibit A, and letter outlining the details of course of instructions marked Exhibit B."

POSITION OF EMPLOYEES: "Rule 2. Promotion Basis.

'Employes covered by these Rules shall be in line for promotion, based on seniority, fitness and ability.

Seniority shall govern where fitness and ability are sufficient. Promotion of employes to vacancies or new positions will be governed by these Rules'

placing a junior employe on a position for which he had neither the qualifications or skill necessary to satisfactorily operate the machine (Comptometer).

"The following is quoted from Pages 6 and 7 of printed copy of Third Division Award No. 899 covering dispute between the Western Pacific Railroad and the Clerks' Brotherhood:

"In 1932 a clerk possessing a displacement privilege under Rule 42 declared his intention of displacing a comptometer operator, contending that after taking a course of instruction in a suitable school, he would be qualified to take over the duties of the position. At that time accredited representative of the Clerks' Organization protested such a procedure, and in no unmistakable terms, contended that an employe should possess sufficient fitness and ability at the time he obtained the position. The following is quoted from letter written by General Chairman, Clerks' Organization, to Assistant to General Manager, dated November 23, 1932:

"In considering this question, I have given consideration to the fact that an employe returning from a thirty day leave finds his position has been abolished and may request an extension of his leave in order to prepare himself for a position held by an employe his junior and which he cannot displace for the reason that he has not at the immediate time sufficient fitness and ability, with a further leave and permission of his employing officer he could on his own time work with the employe on any given position or could learn to operate a typewriter, comptometer, or other office equipment. Had he remained at work, had not taken a leave of absence, he would have been on his position when it was abolished and under the provisions of the rule would have had to displace to position for which he then and there had sufficient fitness and ability.

"That in no case should an employe be granted a leave of absence from a position that the employe and the management know is to be abolished for the purpose of allowing the employe affected to school or train himself to qualify for a position for which he would not otherwise be able to handle."

(Emphasis supplied.)

"Clerk Kelley did not state his reasons for leave of absence requested. He advised that the need for the requested leave of absence was urgent. Obviously, he did not have the necessary experience or qualifications to fill the position occupied by Miss Hoffman at the time his position was abolished. It is also equally obvious that Kelley could not possibly have gained the experience, speed and adeptness necessary to be a qualified Comptometer Operator in the three weeks that he was off on leave of absence. As a matter of fact, he did NOT complete his school course until one month and ten days after he returned from his leave of absence, and even after he had completed his course he possessed only an elementary knowledge of how to manipulate a Comptometer. This would not be sufficient to warrant assigning him to a position requiring practical experience, speed and adeptness.

"It is the position of the Carrier that it was fully justified in denying Kelley the privilege of displacing Miss Hoffman under the existing circumstances, and we urge that the claims presented in his behalf be denied."

OPINION OF BOARD: Based upon the facts and circumstances in this case the claimant, Alfred S. Kelley, Jr., was entitled to displacement on June 6, 1940, to the position held by Grace Hoffman and to occupancy thereof until its abolishment March 31, 1941.

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 claimant was entitled to displacement and occupancy of the position in question as indicated in the preceding Opinion and to reimbursement for that period for the difference between what he would have earned thereon and what he did earn, with deduction for time voluntarily absent.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of August, 1941.