

Award No. 3190

Docket No. CL-3113

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

Guy A. Thompson, Trustee

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, on October 1, 1944, it placed Clerk Mr. E. W. Masters, who held no seniority rights on the Clerks Southern District seniority roster, on the position of Chief Clerk to the Division Superintendent, Arkansas Division, at Little Rock, rate \$316.90 per month, removing therefrom Clerk Mr. T. T. Robinson, whose seniority date listed on the roster in April 4, 1918, who by reason of such Carrier action in the exercise of his seniority displaced Clerk Mr. J. R. Cameron, whose seniority date on the roster is November 2, 1919, from the position of General Clerk at Little Rock, rate \$8.31 per day, and who in turn displaced Clerk Miss Mary Lyle from the position of Stenographer-Clerk at Little Rock, rate \$7.31 per day and failed and refused and continued to refuse to compensate Clerks Robinson, Cameron and Lyle for wage loss suffered by reason of such action, October 1, 1944 until, effective March 22, 1945, when Mr. Masters was removed from the position of Chief Clerk and it was filled by a clerk, Mr. P. P. DeRossett, whose seniority date on the Clerks Southern District seniority roster is June 10, 1928;

2. That Clerks T. T. Robinson, J. R. Cameron and Mary Lyle shall be reimbursed for wage loss suffered in amount

T. T. Robinson	\$487.51
J. R. Cameron	130.00
Mary Lyle	35.00
Total	\$652.51,

as stipulated in detailed statement of claim shown as a part hereof.

EMPLOYES' STATEMENT OF FACTS: On September 27, 1944, the Division Superintendent wrote to Mr. T. T. Robinson, occupant of the Chief Clerk position, copy furnished to Division Chairman and said:

As heretofore stated, the Clerks' Organization has cited no specific rule of the agreement covering hours of service and working conditions of employees represented by that Organization effective July 1, 1943 to support the claim it has presented in this case to your Honorable Board.

In the presentation of the case to the Management the Employees state their cause for action was based upon.

Mr. Masters had no seniority rights when he returned to position of Chief Clerk to Superintendent October 1, 1944.

The Management denies this as being a correct statement of facts. It is true there was a pending "dispute" between the Management and the Clerks' Organization on this question and this dispute was being handled in conformity with the rules of the collective bargaining agreement between the Carrier and the Clerks' Organization and the Railway Labor Act, amended. It was not disposed of until February 28, 1945 when your Honorable Board rendered an award sustaining the claim of the Clerks' Organization that Mr. Masters' name—seniority date February 22, 1907—was to be eliminated from the employees' seniority roster. There is no factual evidence that had this award of your Honorable Board been rendered prior to October 1, 1944, the date Mr. Masters' leave expired and the date he returned to his position as Chief Clerk, Mr. Robinson would have been retained as Chief Clerk to the Superintendent, Mr. Cameron would have been retained as General Clerk and Miss Lyle would have been retained as Stenographer-Clerk. To the contrary, the facts in the case are that Mr. Robinson was not selected by the Management to fill the Chief Clerk position when it was vacated by the removal of Mr. Masters on March 21, 1945 in compliance with the Board's award.

The position of Chief Clerk at Little Rock, as heretofore stated, is one in the "excepted group" and subject to only such rules of the agreement that apply to such positions and a further proviso that in the event of a vacancy in the position an employee to fill it will be selected from the group of employees whose names are listed on the seniority roster of the Southern District (Mr. Roll's letter to Mr. Thomas dated November 15, 1944).

There can be no justifiable charge by the Clerks' Organization that the Carrier did not fulfill the requirements of the rules of its working agreement of July 1, 1943. When the temporary vacancy arose, which vacancy was caused by Mr. Masters' absence, a clerical worker on the Southern District roster was selected to fill it, and again, when the Carrier was obliged to relieve Mr. Masters, in conformity with an award of your Honorable Board, another employee in the clerical group holding seniority on the Southern District was selected to fill it. There is no obligation under any rule or understanding of the agreement that would support such a claim as herein presented by the Clerks' Organization to your Honorable Board and the Carrier feels that it should be denied.

OPINION OF BOARD: On September 27, 1944, Claimant Robinson was informed that he would be displaced from the position of Chief Clerk to the Superintendent, Arkansas Division, effective October 1, 1944, on account of the return of E. W. Masters, the former occupant of the position, from a leave of absence. Claimant Robinson thereupon displaced Claimant Cameron because of seniority from the position of General Clerk. Cameron thereupon displaced Claimant Mary Lyle because of seniority from the position of Stenographer-Clerk. The claim is for wage losses suffered by Claimants Robinson, Cameron and Lyle from October 1, 1944 to March 22, 1945, when Masters was removed from the Chief Clerk's position.

It is clear that the position of Chief Clerk is wholly excepted from the current Agreement except that in the present instance there was a letter agreement under date of November 15, 1941, providing that the occupant of such position shall be selected from employees on the seniority roster of the Southern District. The Carrier therefore had the right to appoint and remove the occupant of the Chief Clerk's position without regard to the rules

of the Agreement as long as the appointee was an employe on the seniority roster of the Southern District.

At the time Claimant Robinson was removed in favor of Masters, the Organization asserted that Masters had no seniority rights on the roster of the Southern District and informed the Carrier of its intention to file wage loss claims in the event he assumed the position. Masters assumed the position and held it until he was removed on March 22, 1945 pursuant to Award 2821 of this Division, Dated February 28, 1945. By this Award it was determined that Masters had no seniority rights on the employes' roster of the Southern District during the period covered by the instant claim.

The Carrier urges that as the occupant of the Chief Clerk's position could be removed at will without violation of the Agreement and that as any employe holding seniority rights of the employes' roster of the Southern District could be assigned the position without violating the Agreement that Claimant Robinson had no right to the position which could afford the basis of a wage claim under the circumstances here shown.

We do not concur in the position of the Carrier. When the Carrier violated the letter agreement by assigning the Chief Clerk's position to one having no seniority rights on the roster of the Southern District, it subjected itself to penalty for the violation. While Claimant Robinson could have been removed at will by the Carrier from the Chief Clerk's position, the presumption is that the existing status would have been maintained but for the improper assignment of Masters to the position. The argument advanced by the Carrier as to what could have been done by it under the applicable Agreement is too speculative as a defense to what was done. The employe occupying the Chief Clerk's position when it was improperly assigned to Masters is the logical employe to claim the penalty for the violation. The wage losses suffered by resulting displacements result directly from Carrier's violation of the letter agreement. We think the Carrier is required to pay wage losses growing out of the violation of the letter agreement for the reason that it must be assumed that no changes would have been made except for the instance of the Carrier in returning Masters to the position. Any other rule would permit a violation without a penalty, a situation that would make nugatory any benefit to be derived from the letter agreement.

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 Agreement was violated as contended by the Organization.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.