

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
ILLINOIS CENTRAL RAILROAD COMPANY

**STATEMENT OF CLAIM:** (1) That the Carrier violated schedule rules governing seniority and assignments by, on February 23, 1944, assigning B. B. Parker who had no seniority rights on the Iowa Division-East seniority district to position of foreman of Extra Gang No. 1, bulletined on February 9, 1944, instead of assigning thereto senior bidder, William Charley, who holds seniority rights as foreman on that seniority district;

(2) That William Charley shall forthwith be assigned as foreman on Extra Gang No. 1;

(3) That William Charley shall be paid in the difference between what he earned as section foreman and that which he would have earned had he been assigned as foreman of Extra Gang No. 1, retroactive from February 23, 1944.

**JOINT STATEMENT OF FACTS:** Under date of February 9, 1944 bulletin was posted to employes in the Track Department on the Iowa Division-East, advertising the position of an extra gang foreman.

Track Foreman William Charley with seniority rights as track foreman on the Iowa Division-East as of March 1, 1914 bid for the position. Track Foreman B. B. Parker who had no seniority rights on the seniority district, Iowa Division-East, was awarded and assigned to the position.

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rules 1, 2, 3(a), 14, and 21(a) of Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes read:

"Rule 1. Seniority begins at the time the employes' pay starts."

"Rule 2. Seniority rights of all employes are confined to the sub-departments in which employed. Sub-departments are defined as follows:

1. Track Department
2. Bridge & Building Department
3. Paint Department
4. Pumpers
5. Watchmen, and Gatemen or Signalmen."

**OPINION OF BOARD:** This is a joint submission and the agreed facts are as follows:

"Under date of February 9, 1944, bulletin was posted to employees in the Track Department on the Iowa Division-East, advertising the position of an extra gang foreman.

Track Foreman William Charley with seniority rights as track foreman on the Iowa Division-East as of March 1, 1914 bid for the position. Track Foreman B. B. Parker who had no seniority rights on the seniority district, Iowa Division-East was awarded and assigned to the position.

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts."

The Employees contend that Claimant William Charley should have been appointed instead of Foreman B. B. Parker as the latter had no seniority rights on that Division, and in support of their claim they rely upon the following rules of the effective Agreement:

"Rule 1. Seniority begins at the time the employees pay starts.

"Rule 2. Seniority rights of all employees are confined to the subdepartments in which employed. Subdepartments are defined as follows:

1. Track Department
2. Bridge and Building Department
3. Paint Department
4. Pumpers
5. Watchmen, and Gateman or Signalman."

"Rule 3. (a) Seniority rights of all employees of higher rank than laborers, including pumpers, will be confined to the territory over which one Division Engineer or corresponding officer has jurisdiction.

(b) Seniority rights of laborers to promotion will extend to the territory over which one Division Engineer or corresponding officer has jurisdiction. For displacement and filling vacancies, their seniority rights will be described in Rule 6-B.

(c) Seniority of system bridge gangs will be confined to such gangs. The Management reserves the right to use such gangs at any point, where in their judgement, their services are necessary.

(d) Seniority rights of track, bridge, tunnel and highway crossing watchmen and watchmen, gatemen or signalmen at non-interlocked railway crossings for displacement will extend to the territory over which one Division Engineer or corresponding officer has jurisdiction."

"Rule 21. (a) Bulletin notice covering new positions or vacancies will be posted for a period of ten (10) days at the headquarters of the gangs in the sub-department of the employees entitled to consideration in filling the positions, during which time employees may file their applications with the official whose name appears on the bulletin. Appointments will be made not less than ten (10) days nor more than twenty (20) days from the date the bulletin is posted. Copy of bulletin will be furnished local chairman. Name of successful applicant will be posted."

If seniority alone is to prevail the claim must be allowed under the above-quoted rules and Rule 6. See Award No. 1543. The Claimant was promoted to the position of Foreman in 1914 and held seniority rights on Iowa Division-East from that date, while Parker only had seniority rights on Iowa Division-West.

The Carrier contends that the Claimant was not qualified as he could not write and that Parker had a greater capacity for responsibility. To support its contention, the Carrier relies upon Rule 20, which reads:

(a) Employees will be regarded as in line for promotion, advancement depending on faithful, intelligent and courteous discharge of duty and capacity for greater responsibility. Where these are sufficient, seniority will govern.

(b) An employe bidding on and assigned to a position in a higher classification failing to qualify within thirty (30) days, shall retain his seniority rights, and may exercise such rights when vacancies occur, or new positions are created, but may not displace any regular assigned employe."

There is no question of promotion in this claim. Claimant had been a Foreman for more than thirty years. It is true that he had been a Yard Foreman for most of this time but the records show that he also had on two occasions been an Extra Gang Foreman. But regardless of that fact, he was promoted to the position of Foreman in 1914. We find nothing in the rules that makes any distinction between a Main Line Foreman, Yard Foreman, or an Extra Gang Foreman. See Award No. 1543.

The bulletin did require that the application be in the applicant's own hand writing and it is admitted that Claimant's application was not in his own hand writing. There is nothing in the rules that justifies this requirement.

**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 Employees involved in this dispute are respectively carrier and employees 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 Carrier violated the Agreement as contended by the Employees.

#### AWARD

Claim (1, 2, and 3 ) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.