

Award No. 3476
Docket No. CL-3356

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY; SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY; SUGARLAND RAILWAY COMPANY;
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) J. L. Collier forfeited his clerical seniority when he accepted position as Traffic Representative (freight solicitor) and did not obtain leave of absence. Also

(b) Claim that Mr. Collier's name be removed from the seniority roster.

EMPLOYEES' STATEMENT OF FACTS: Mr. Collier was formerly employed in a clerical capacity in the Traffic Department at Harlingen, Texas, and had seniority date of December 1, 1929.

Sometime during the year 1943 he was offered, and accepted, a position as Traffic Representative (Freight Solicitor). Mr. Collier did not obtain or request leave of absence necessary to protect his clerical seniority.

The Carrier contends that the position of Traffic Representative is an official position and that Mr. Collier retains his seniority under Paragraph (d) Rule 3.

Traffic Representatives are not classed as officials by the Interstate Commerce Commission, but are grouped with the "professional, clerical and general group".

POSITION OF EMPLOYEES: The employees quote the following rules for consideration in the instant case:

"RULE 3. SENIORITY DATUM

"(a) An individual acquires an employe status at the time his pay starts, subject to the provisions of Rule 64.

twenty-five years as official positions in the application of Rule 3(d) of the Clerks' Agreement;

2. Rule 3(d) specifically provides that "Employees * * * promoted to official positions and who have established seniority under this agreement shall retain all their rights and continue to accumulate seniority in the seniority district from which promoted";

3. Mr. Collier has established seniority as a clerk since December 1, 1929, in accordance with the provisions of Rule 3(d);

4. It has not been the practice in the application of Rule 3(d) to require clerical employees appointed to positions of Traffic Representatives to obtain a leave of absence;

5. Mr. Collier had not prior to the filing of this claim or since been requested by the Organization to obtain a leave of absence;

6. No objection was raised by the Organization at the time of the issuance of seniority roster in January, 1944, on which Mr. Collier's name was shown as a Traffic Representative with clerical seniority as of December 1, 1929;

7. Fourteen of the presently employed Traffic Representatives, all of whom were appointed from positions coming within the scope of the Clerks' Agreement, have not obtained and have not been requested to obtain a leave of absence to protect their clerical seniority rights;

It is clearly evident that there is no basis for the "claim that Mr. Collier's name be removed from the seniority roster". Therefore, it is the position of the Carrier that the claim set forth in the Employees' Ex Parte Statement of Claim should be denied.

OPINION OF BOARD: Mr. J. L. Collier entered the Freight Traffic Department on December 1, 1929, and established a seniority as of that date. On September 1, 1943, he was appointed a traffic representative. His name was carried without protest on the 1944 roster of the Freight Traffic Department as a traffic representative, showing seniority date of December 1, 1929. His name was placed on the 1945 roster and was protested by the Organization. The Carrier declined to remove Mr. Collier's name from the roster, hence this claim.

Rule 3(d) provides:

"Employees now filling or hereafter promoted to official positions and who have established seniority under this agreement shall retain all their rights and continue to accumulate seniority in the seniority district from which promoted. * * *"

The Organization contends that Mr. Collier should have secured a leave of absence under the provisions of Rule 35, and not having done so, has forfeited his seniority. The Carrier contends that Mr. Collier occupies an "official" position under the rule and hence is not required to secure a leave of absence.

The matter then resolves down to this: Is the position of traffic representative an official position within the contemplation of the rule?

To sustain the contention of the Organization would be to hold that in drafting this agreement the parties intended fully to protect the seniority of men while serving on positions covered by the agreement; that they likewise intended fully to protect the seniority of employees who had been promoted to "official" positions; and that they also intended that in between these two classifications would be a group of men occupying a sort of no man's land, whose seniority would be protected only in the event they obtain a leave of absence as provided in Rule 35. We find nothing in the agreement which indicates an intention to preserve seniority to employees who have

advanced several steps upon the promotion ladder and to give only qualified protection to the employee who was on the first step. Reason indicates that if a distinction was to be made, it would be in the reverse of this order. But no distinction was made. We are of the opinion that it was intended by the agreement in the use of the term "official positions" in Rule 3(d) to include in that term all positions not covered by the applicable agreement to which employees are promoted from positions covered by the applicable 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 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 J. L. Collier did not forfeit his clerical seniority when he accepted a position as traffic representative without having obtained a leave of absence and that his name should not be removed from the seniority roster.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.