

Award No. 9789

Docket No. CL-9499

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) That the Carrier violated the Agreement when, without concurrence of the Organization or compliance with Agreement rules, it granted Mr. James Alexander Bawsel leave of absence to accept employment elsewhere.

(b) That the Carrier shall by appropriate order be required to remove the name of Mr. James Alexander Bawsel from the seniority roster upon which it appears.

EMPLOYEES' STATEMENT OF FACTS:

(1) Mr. James Alexander Bawsel was formerly an employe of the Carrier, having a seniority date of October 1, 1930 on the Group 1 roster, Stores Department, Russell, Kentucky. Prior to December 1, 1955 Mr. Bawsel had been promoted to the "excepted" position of Division Storekeeper, retaining his seniority rights under Agreement rules.

(2) Effective December 1, 1955, Mr. Bawsel accepted employment with the Pere Marquette Railway at Grand Rapids, Michigan. The Carrier gave no copy of a written leave of absence to the Division Chairman, nor did it request the Organization to agree to such leave of absence, as required by Rule 28.

(3) The Pere Marquette Railway Company (now called The Chesapeake and Ohio Railway Company—Pere Marquette District) has an agreement with its clerical, office, station and stores employes separate and distinct from the Agreement in effect between The Chesapeake and Ohio Railway Company and its clerical, office, station and stores employes.

(4) The title page of Agreement between The Chesapeake and Ohio Railway Company and its clerical, office, station and stores employes reads as follows:

would be contrary to the provisions of the Railway Labor Act with respect to officials of Carrier.

CONCLUSIONS

The Carrier has shown that:

1. Bawsel, prior to the time any question arose, had clerical seniority on the Russell District from October 1, 1930.
2. On December 1, 1955, Bawsel was promoted to District Storckeeper, an official position, with headquarters at Grand Rapids, Michigan.
3. Rule 1 (f) contemplates and provides for retention of seniority whenever and wherever a clerical employe coming under such agreement is promoted to an official position with the Railway Company. Proof of such intention of the parties resides in the fact that employes who have gone to far flung traffic offices to fill official positions and others who have gone to positions in old Pere Marquette territory have retained seniority without question. Additional proof that the qualification turns on occupying an official position with the Railway Company is shown by the fact that officials who served only Chesapeake and Ohio interests prior to the 1947 merger of the Pere Marquette now perform their work for the entire system, including the former Pere Marquette, without question as to retention of clerical seniority.
4. Any holding that Bawsel has forfeited all clerical seniority will not only deprive him of an important consideration which has been gained under the collective bargaining agreement for his craft, but it will result in discrimination against him, or will serve to take from others valuable rights and protection to which they have become entitled under the collective bargaining agreement negotiated in their behalf and in behalf of others similarly situated.
5. There has been no violation of Rule 1 (f) in this case.
6. The claim should, therefore, be denied in its entirety.

All data included in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Pursuant to authorization granted by the Interstate Commerce Commission on April 1, 1947 in Finance Docket No. 15228, the Carrier's President on June 6, 1947 issued circular No. 1 announcing the merger of the "properties and franchises" of the Pere Marquette Railway Company with those of the Chesapeake and Ohio Railway Company. After the consolidation the two properties were designated as the "Pere Marquette District" and the "Chesapeake District". The Organization on the Pere Marquette District at the time this claim was filed still had its own Agreement with the Chesa-

peake and Ohio and the Organization on the original Chesapeake and Ohio still had its Agreement. As the Organization says in its Ex parte Submission "All consolidation of work covered by the Pere Marquette Clerical Agreement or its transfer to employees covered by the Chesapeake and Ohio Agreement since June 6, 1947 has been accomplished under the terms of consolidation agreements covering each such consolidation, such agreements being signed by the General Chairman of the Brotherhood representing the employees covered by both effective clerical Agreements."

Mr. James A. Bawsel established a seniority date of October 1, 1930 on the Group 1 seniority roster for the Stores Department at Russel, Kentucky covered by the Chesapeake District Agreement, and he retained his seniority while occupying various excepted positions to which he had been promoted. On December 1, 1955 Mr. Bawsel was promoted to official position of District Storekeeper with headquarters at Grand Rapids, Michigan. Grand Rapids, Michigan is in the Pere Marquette District. The Organization asks that the name of Mr. Bawsel be removed from the seniority roster upon which it appears. That Rule 1 (f) of the Chesapeake and Ohio District does not permit a clerical employee to retain seniority when going to an official position on what was the Pere Marquette Railway.

Bawsel never asked for a leave of absence and was never given one by the Carrier. He had been a member of the Brotherhood when employed as Division Storekeeper. When he went to position of District Storekeeper at Grand Rapids, he requested withdrawal card from his lodge, and after being furnished with the card he was asked to return it and he did so. He has continued to pay dues to the Lodge.

Bawsel has always been an employee or an official of the Chesapeake and Ohio Railroad. The Chesapeake and Ohio Railroad has an agreement with the Organization. The fact that it has a separate agreement with the Pere Marquette Division employees does not alter the fact that it is still the Chesapeake and Ohio Railroad. Carrier cites many instances where the employee has been promoted and is working off of the property. In one instance the Organization Representatives asked Carrier to put down in writing the joint understanding of the Carrier and the Committee that the man going to Detroit was retaining his seniority on the basis that he was going to a semi-official position with the Railway Company. They acquiesced in the practice which was a proper practice under the Rule.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement by refusing the request of the Organization.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.