

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

**PARTIES TO DISPUTE:**

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

**THE INDIANAPOLIS UNION RAILWAY COMPANY**

**DISPUTE.**—"Claim of Mr. Elmer Tompkins for displacement rights on position held by Mr. Oscar Hess and for payment of the difference in the rates of pay, retroactive to March 17, 1933."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This case being deadlocked, Paul Samuell was called in to sit with this Division as Referee.

An Agreement exists between the parties bearing effective date February 1, 1924.

On February 1, 1930, the Baggage and Mail Departments of the Indianapolis Union Railway Company were consolidated, (having been operated separately prior to that time) several positions being abolished, and among other changes, three positions as General Foreman were created, these men having supervision over the foremen on platforms and other locations. Prior to consolidation there were four foremen in the Baggage Department, three foremen and four assistant foremen in the Mail Department, all of which were covered by the Rules of Agreement.

The positions of General Foreman, when created, were not bulletined, and the carrier asserts that no objections were made by the local or General Chairman of the employees, nor by Mr. Tompkins or any individual until approximately three years later, March of 1933. The record in this dispute seems to support the carrier's statement in this respect. Mr. Tompkins served as Baggage Foreman on the property from 1916 until the date of consolidation, at which time he was transferred to the Baggage and Mail Department as Platform Foreman, the position of Baggage Foreman having been abolished by the carrier on March 16, 1933. Mr. Tompkins (seniority date June 1910) verbally requested of the Trainmaster to displace position of General Foreman held by Oscar Hess (seniority date January 1919), which request was denied by the carrier on the ground that the position of General Foreman was not covered by the Agreement.

At the time of consolidation the carrier asserts, but is denied by the employees, that all the positions of Baggage and Mail Handlers were bulletined excepting the three positions of General Foreman, which positions are official positions and not within the scope of the Agreement.

**POSITION OF EMPLOYEES.**—(a) That the positions of General Foreman are not official positions and that the duties of these positions are relatively the same as the duties of ordinary and sub-foremen, and that the duties of General Foreman, since consolidation, are relatively no different from those prior to consolidation.

(b) That there never were any positions in the Baggage and Mail Department which were exempt from the Schedule.

(c) That in truth and fact, the General Foremen are Aisle Foremen, and should be so classified.

(d) That Tompkins has sufficient ability.

(e) That denial of Mr. Tompkins' request was a violation of Rules 12, 40, 2 and 29.

**POSITION OF CARRIER.**—(a) That position of General Foreman is official and is not subject to bulletining or jurisdiction of the Agreement.

(b) That no objection was made to the procedure adopted on February 1, 1930, as to the method of consolidation and the creation of the positions of General Foreman, and that the raising of objections some three years later comes too late, and does not comply with Rule 30, paragraph 3, as hereinafter recited.

(c) That the carrier was permitted to create the official positions of General Foreman under Rule 1, which refers to and defines its scope in Decision No. 220 of the United States Railway Labor Board, Vol. 2, 1921, page 221, and also under Article 1, Section (b) of the National Agreement, as hereinafter recited.

At the time of the creation of the positions the three General Foremen were changed from a daily rate to a monthly rate of \$155.00, working every day without overtime for work performed in excess of eight hours and on the seventh day and enumerated Holidays, but were allowed fourteen days vacation, in accordance with custom prevailing among General Foremen and supervisory positions of the carrier. The positions of other Foremen were placed on a daily rate and worked on six days assignment, and were subject to Rules as set out in the Agreement. It is asserted by the carrier that at the time of consolidation and the arrangement above outlined, a Vice-General Chairman of the Employees' Organization and two other representatives of the Baggage and Mail Handlers agreed to the arrangement. This is denied by two of the surviving representatives, although they admit that there was a conference, and the Brotherhood now claims that none of the representatives had authority to agree to the change. It is further asserted by the carrier that at the time of consolidation Platform Foremen Sims and Johnstone, with seniority rights were displaced without protest on their part or on the part of the Brotherhood, although Johnstone had seniority over General Foreman Hess; that on April 16, 1933, when further reductions in positions were made, Foreman Tompkins and Foreman Gladson were displaced, and that Tompkins *verbally* requested permission to displace General Foreman Hess, which request was denied, and that no protest in writing was filed.

The important question to be discussed is, is the position of General Foreman excepted from the Agreement between the parties? Rule 1 reads as follows:

*"Scope.*—These rules shall govern hours of service and working conditions of all employees classified under Groups 2 and 3 of Decision 220 of the U. S. R. R. Labor Board, consisting of the following employees on the on the Indianapolis Union Railway Company: Storekeepers, Assistant Storekeepers and Lamp Room Attendants, Foremen, Subforemen, Baggage and Mail Handlers and Watchmen, Gatemen, Train Announcers, Station Attendants, Parcel Room Employees and Matrons."

If, as claimed by the employees, the three positions are covered by Rule No. 1, then the following Rules would also operate to sustain their claim. Rule 29 reads:

*"Rule 29. Rates.*—Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay, or evading the application of these rules."

Rule 12 reads:

*"Rule 12. Positions abolished.*—Employees whose positions are abolished may exercise their seniority rights over junior employees in accordance with Rule 2. Other employees affected may exercise their seniority rights in the same manner."

In defining the scope of the Agreement in Rule 1, reference is made as to classification under Groups 2 and 3 of Decision 220 of the U. S. R. R. Labor Board. This decision contains the following language:

*"Group 2.* This Group shall include station, storehouse, warehouse, and elevator foremen, and assistant foremen, and other foremen supervising employees specified in Group 3, excluding such employees as were considered

as coming under the provisions of section (b), Article 1 of the National Agreement promulgated by the United States Railroad Administration."

And upon referring to Article 1 (b) of the National Agreement, the following language relating to scope is used:

"This Agreement shall not apply to Chief Clerks of Supervisory Agents at the larger stations, Foremen who supervise subforemen, or the personal office forces of such officers as Trainmaster, Division Engineer", etc.

In order to determine the question as to whether the position of General Foreman is excepted from the Agreement, a circuitous route must be pursued. Finally analyzed, we find that the Scope Rule contains the provision that the Agreement does not apply to "foremen who supervise subforemen." Much evidence has been introduced in the record, a part of which supports the position that General Foremen are now supervisory officials only, with greatly enlarged duties in a supervisory capacity of ordinary foremen, the other part to the effect that the positions and the duties are the same as those performed by the ordinary Foremen prior to the date of consolidation. The issue on this point is indeed sharp, and before making a final decision the Referee requested and obtained further affidavits and statements by the contending parties.

It is now claimed by the employees that the methods used by the carrier in obtaining additional information was unethical and compulsory. This claim is not supported, however, by evidence of probative force, and we are constrained to accept the record now before us.

The weight of the evidence is to the effect that the three General Foremen are now and have been acting since the date of consolidation, in a supervisory capacity, and that they exercised supervisory jurisdiction over a large group of employees including Foremen in all departments. They are paid a monthly salary with no overtime or exceptions to Sundays or Holidays. They keep many records, fill out and post regular bulletins for vacancies, and make assignments of employees to positions. We are of the opinion that the three General Foremen are supervisory officials or "foremen who supervise subforemen" as contained within Article 1 (b) of the National Agreement.

At the time of the consolidation in 1930, Mr. Tompkins was affected by the rearrangement. There is nothing in the record to indicate that he or any representative of the Organization protested the change, although it is claimed by the representatives of the Brotherhood that they were not informed of such change. Three years is a very long time to be laboring under false impressions, especially when the party involved has been affected adversely by such change. The record indicates that on April 16, 1933, when Mr. Tompkins was displaced, he verbally requested permission to displace General Foreman Hess, but when the request was denied, he raised no protest until several months later when the dispute was formally taken up through his representatives.

Furthermore, if employee Tompkins was of the opinion that the position of General Foreman was not an official position at the time it was created in 1930, he or his representatives should have immediately insisted that the positions be bulletined and thus brought the question to an issue at the proper time and in an orderly manner. While it is true that Mr. Tompkins was not compelled to demand that he displace General Foreman Hess in 1930, yet it was his duty as an employee who now seeks protection under the Railway Labor Act and under the Agreement between the carrier and employees, to have protested the irregularity of any action taken by the carrier. Briefly this Division is of the opinion that employee Tompkins has slept on his rights.

#### AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,  
Secretary.

Dated at Chicago, Illinois, this 4th day of November 1935.