

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

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

DISPUTE.—"Claim of P. M. Vicellio for the restoration of his position as Night Chief Yard Clerk, Baton Rouge, Louisiana, at the rate of \$5.82 per day, and in addition, for any loss of pay suffered by him and other employees, caused by the transfer of his work to newly created position of Night Assistant Yardmaster held by Mr. D. L. Pope, since August 8, 1932, in violation of Rule 61 of the Schedule of Rules and Working Conditions."

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

The carrier and employee involved in this dispute are respectively carrier and employee 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.

Prior to August 8, 1932, the carrier had maintained, among others, the position of night chief yard clerk in its yards at Baton Rouge, Louisiana, and the position had been included under the Agreement between the Brotherhood of Clerks and the Illinois Central System, dated June 23, 1932.

Mr. P. M. Vicellio, principal claimant herein, for sometime prior to August 8, 1932, had occupied the position in controversy. In this capacity, Vicellio had performed a wide range of duties customarily classified as clerical, including the answering of an average of twenty-five telephone calls an hour, transmitting by telephone to the General Yardmaster all orders received by the Yard office, handling trainmen and switchmen's boards. In addition to these duties, he was required to make out several different forms relating to the movement of trains and boats at the point in question. The record clearly indicates that the position in question prior to August 8, 1932, was predominantly, if not exclusively clerical in character within the meaning of Rules 1 and 2 of the Agreement between the parties.

Effective August 8, 1932, the carrier abolished the position of night chief yard clerk and created a position of night assistant yardmaster. In its submission, the carrier asserted:

"The clerical work performed by the night chief yard clerk was distributed to the night assistant yardmaster and the record clerk, the record clerk taking over that part of the work which was of such character as could be performed by him or any other average clerk; and, the night assistant yardmaster took over the remainder of the work, in addition to the duties of Assistant Yard Master."

In explanation of this change, the carrier stated in its submission that "the real reason for making the change in this case was an urgent need for additional supervision at night in the terminal at Baton Rouge to supervise the usual outside yard work, making deliveries to the transfer boats, etc. * * *"

The carrier offered no evidence in support of its assertions in explanation of the change under consideration. It is particularly significant that the record contains no statement from Mr. Pope, the assistant yard master, as to the scope of his duties. The record, however, does contain evidence tending to show that Mr. Pope as assistant yard master was merely performing the duties which Mr. Vicellio had previously performed. It also contains evidence tending to show that many supervisory instructions of "outside yard work", which

might have been expected to emanate from the night assistant yard master, came from the night yard master or the assistant day yard master.

As night chief clerk under the Clerks' Agreement, Vicellio worked 8 hours a day, six days a week, at the rate of \$5.82 a day. The carrier assigned Pope to the position of assistant night yard master at a monthly salary of \$230. This position is not embraced within the Clerks' Agreement. The record does not indicate the number of hours the carrier requires Pope to work in the position to which he was assigned.

On behalf of the petitioner it was contended that the change in question was in violation of Rule 61 of the Agreement. This rule provides:

"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 rate of pay or evading the application of these rules."

CONCLUSIONS OF THE THIRD DIVISION.—On the basis of the record, the Referee makes these additional findings:

(1) The position of night chief clerk was an established position under the Clerks' Agreement within the meaning of Rule 61.

The argument of the carrier that Rule 61 does not apply to the situation under consideration because the position of night assistant yard master is not under the Clerks' Agreement is untenable. The obvious purpose of this rule is to prevent the carrier from converting a position under the Agreement to a position not under the Agreement under the conditions set forth in the rule.

(2) The carrier abolished the position in question and created a new one under a different title covering relatively the same class of work" within the meaning of Rule 61.

(3) While, on the basis of the record, it cannot be said that the carrier made the change in question "for the purpose of reducing the rate of pay", it can be said that it was done for the purpose, or with the necessary effect, of "evading the application of these rules."

It was contended on behalf of the carrier that to bring the situation under consideration within the purview of Rule 61, it was incumbent upon the petitioner to show that the carrier made the change in question with an actual, subjective intent to reduce the rate of pay or evade the application of the rules. With this contention, the Referee cannot agree. In the interpretation of agreements, we are interested in what a person seems to intend; not in what he actually intends. In this view of the matter, the intent of an act must be determined by overt actions and its natural consequences.

AWARD

The claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 6th day of January 1936.