

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

DISPUTE.—

"Violation of schedule agreement effective November 1st, 1929, and provisions of wage agreements effective October 16th, 1923, March 16th, 1928, and August 1st, 1928, by discontinuance of the classification "Caller" at Galewood Transfer Platform, Chicago, Illinois, July 7th, 1931. Claim of Ray Emerick, Daniel O'Herron, John Shorter, et al, for restoration of the established and agreed upon differential of five (5) cents per hour above truckers' rates and for monetary loss sustained retroactive to July 7th, 1931."

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

The carrier and the employes involved in this dispute are respectively carrier and employes 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.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

There is in evidence an agreement between the parties effective November 1, 1929.

Prior to July 7th, 1931, the movement of freight handled at Galewood Transfer Platform was accomplished by men working in gangs. These gangs were then composed of a Checker, a Caller, and one or more Truckers. The Checker was paid \$5.74 per day, the Caller, 54 cents per hour, and the Trucker, 49 cents per hour. These rates were effective August 1st, 1928, in the case of Checkers and Callers, and March 16th, 1928, in the case of the Truckers, and resulted from wage agreements negotiated by and between representatives of the employes and representatives of the Carrier.

Effective July 7th, 1931, the Carrier abolished all positions classified as "Caller." This action was taken by the Carrier without notice to the employes or their representatives. The employes affected by the action immediately exercised their seniority to displace junior men employed as Truckers in order to obtain employment.

Subsequent to July 7th, 1931, the movement of freight handled at Galewood Transfer Platform has been handled by men working in gangs just as it was prior to July 7th, 1931; the gangs have been composed of a Checker, paid \$5.74 per day, and two or more men, both of whom have been classified as Trucker and are being paid 49 cents per hour.

Rule 42 of the agreement between the parties provides as follows:

"**RATES DISCONTINUED.**—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."

The employees claim that the Callers now classified as Truckers are performing "relatively the same class of work" as before and that therefore the rule has been violated. The Carrier contends that Rule 42 does not apply because no "new positions" have been created, the position of Trucker having always existed. But we think that such a technical reading of the rule is not warranted and that it was intended to apply to a case of this sort. From the point of view of the Callers, they were being shifted to new positions while, as they claim, still performing relatively the same class of work, and from their point of view and under the fair meaning of the rule in question, it can make no difference whether their new positions were called by an old title or a new one. If the facts sustain their claim, they were still doing the work of Callers, but under the title, new to them, of Truckers, and at a lower rate of pay. In the broader sense, moreover, a Trucker who is in fact doing Caller's work is doing something that was not done before and can therefore be said to be occupying a new position within the meaning of Rule 42. Under this view of the rule, we do not need to inquire whether, as claimed by the employees and denied by the carrier, the action taken violated other rules or violated certain provisions of the Railway Labor Act.

The real issue, then, is whether or not after the change of title the men previously employed as Callers were doing relatively the same class of work as before. The question is entirely one of fact and must be decided on the record, which includes stenographic testimony of various employees in an investigation held in the office of the agent of Galewood station on September 10, 1931. Making allowance for the fact that some of the witnesses in that investigation were personally interested in establishing the claim now made and that other witnesses were kindly disposed toward those thus interested, the testimony as a whole indicates no substantial difference in the work done by the Callers before and after the change. All that they ceased to do was to call out to the Checker the marks on the freight and to write down in chalk the box and run numbers given them by the Checker. Instead, the Checker looked at the marks and did the chalking.

It seems difficult to suppose that the mere operation of calling and chalking would alone account for the differential in pay between the positions of Caller and Trucker. While the testimony is at points conflicting and not overly clear throughout, it indicates that the chief and most onerous duties of the Caller, the duties which occupied most of his time and which seem to have accounted for the differential rate, were the duties of sorting the freight as it arrived, observing the marks, arranging the packages so that those which should go on the same truck would go on the same truck, and loading the trucks accordingly. The Truckers' principal duties were to take the trucks when loaded to their proper destination, according to the box and run numbers, and unload them. For the former duties, more intelligence and literacy were required than for the latter, and the difference in the type of man required and in the degree of responsibility involved seem to have accounted for the differential in the pay.

The case would be simple were it not for the fact that, as the testimony shows, the two jobs sometimes overlapped, Truckers sometimes being called upon to sort and load and Callers sometimes being called upon to do some hauling. Certainly no completely clear-cut line can be drawn between the two positions, but the effect of the testimony is that the primary responsibility and duty of the Caller and the work upon which he was chiefly engaged was to sort and load and that this work required a higher competence than that of Trucking, which was the principal function of the Trucker, even though he may at times have assisted in some of the work of the Caller. After the position of Caller was abolished, the testimony indicates that in each gang the former Caller was the one upon whom the Checker primarily relied for the proper sorting and loading of the freight. The calling and chalking seems to have been a purely incidental part of the work and its absorption by the Checker and the abolition of the position of Caller seems only to be explainable by a desire to economize by reducing the rate of pay of the Callers.

We do not need to inquire into the situation at smaller stations where Callers have never been employed. According to the record, Galewood Station was and is the busiest transfer point on the road, the two platforms having a capacity of approximately 254 cars. The work before the change and after the change

did not differ. All that happened was that the Checker looked at the marks and did the chalking instead of having someone else tell him the marks and put the chalk on for him. The evidence does not warrant the assumption that this trifling addition to the Checker's duties constituted all that there was to Caller's position or accounted for the differential in pay between the Callers and the Truckers.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 26th day of March 1936.