

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES**
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE--

"Claim of Jared Simister, Stower, Salt Lake Freight Station, for one day's pay each date, January 2nd to 12th, inclusive, 1935, when used in filling position of regular assigned stower who was laying off. Claim is based on Rules 6, 43, and 61 of the current schedule."

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.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Regular assigned stower Olson, Salt Lake Freight Station, laid off January 2nd to 12th, inclusive, 1935. A portion of this stower's work was performed by Mr. Simister who was paid for time actually worked as follows:

January 2, 1935,	7 $\frac{1}{4}$ hours.
" 3,	2 $\frac{1}{2}$ hours.
" 4,	3 $\frac{1}{4}$ hours.
" 5,	3 $\frac{1}{2}$ hours.
" 6,	Sunday.
" 7,	7 $\frac{3}{4}$ hours.
" 8,	3 hours.
" 9,	2 hours.
" 10,	4 $\frac{1}{4}$ hours.
" 11,	4 hours.
" 12,	4

"This claim is for 38 $\frac{1}{2}$ hours at 52 cents per hour, or \$20.02."

There is evidence an agreement between the parties bearing effective date of February 1, 1923, and the following rules thereof read:

"RULE 12

"Positions or vacancies and leaves of absence of thirty days or less duration shall be considered temporary and may be filled without bulletining.

"RULE 43

"Except as otherwise provided in this Article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.

"RULE 61

"Employees covered by Groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly, or hourly basis shall be paid on a daily basis. The

conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employes covered by the rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.

"RULE 67

"Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted.

"RULE 80

"Established positions shall not be discontinued and new one 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."

The petitioner contends that Harry Olson is a regularly assigned stower at Salt Lake Freight Station; that he laid off January 2 to 12, inclusive, 1935, and that complainant, Jared Simister, was used to perform the major portion of stower Olson's duties during the period in question, and that Simister was paid only for time actually worked. It is also contended that Simister holds seniority rights in the seniority district in question as of August 8, 1920, and was the senior employee requesting the right to fill the vacancy caused by Olson's absence. The petitioner further contends that the position of stower held by Harry Olson, being a regularly assigned position, the carrier could not vacate or blank the position and require Simister to perform the work and pay him only for time actually worked, without violating the principles laid down in Rules 67, 68, and 80.

The Carrier contends that while Mr. Olson has a payroll classification as stower, there are no employes at the Salt Lake Freight Station who stow freight in cars exclusively, and that each trucker does his own stowing; that due to Olson's advanced age, he was used as a sort of handyman, and his duties varied from day to day, although they consisted particularly of papering floors of and bridging cars, trucking freight, bracing acid, batteries, powder, etc., after shipments are loaded in cars, gathering up loading tickets, helping pull bridges, closing doors and similar work; that during the latter part of December 1934 and the first part of January 1935, the LCL tonnage handled through the warehouse, Salt Lake Station, was the lowest for several months, and for this reason Olson's place was not regularly filled during the time he was absent on account of illness; that the carrier is not required, under the agreement, to fill a vacancy when a regularly assigned employe lays off if, in the judgment of the management, there is not sufficient work to justify such action; that the rules of the agreement do not provide that extra employes are entitled to a minimum of eight hours' pay on days a regular assigned employee lays off, even though he performs the duties of the regularly assigned employee.

The Third Division finds that evidence as to actual facts is conflicting to such a degree as to preclude the possibility of an award being rendered on the merits of the dispute. The record indicates that more than one employee performed some of the regular duties of Olson on the days in question and the carrier was agreeable to compensate the senior employee. It is apparent that by a closer check of all the pertinent facts, the parties can dispose of this dispute and it is remanded for that purpose, without prejudice to right of resubmission in event an agreement is not reached.

AWARD

Case remanded for disposition in line with above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1935.