

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES
SOUTHERN RAILWAY COMPANY**

DISPUTE.—

“Claim of J. C. Bohorfoush, Birmingham, Alabama, for pay at basic rate of 62 cents per hour, less proper deductions, instead of 39 cents per hour, less proper deductions, for the service of driving the Birmingham Storehouse shop yard truck, June 1 to August 10, 1934, inclusive.”

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

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 parties jointly certified the following facts and the division so finds:

“From June 1 to August 10, 1934, inclusive, there were in operation at the Birmingham Storehouse three trucks, two of which were operated by employees classified as truck driver and paid at rate of 62 cents per hour, less proper deductions, and one operated by Mr. Bohorfoush, classified as storehouse man and paid at rate of 39 cents per hour, less proper deductions.

“On May 1, 1934, an agreement was entered into between the Southern Railway Company and certain storehouse employees, as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. This agreement became effective on June 1, 1934, and contains the following rules:

“‘RULE 31—PRESERVATION OF RATES

“‘Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

“‘A “temporary assignment” contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

“‘At points where less than eight hours work per day as Truck Driver, Tractor Driver, Torchman, or Groundman is necessary, this work will, as in the past, be performed by Storehouse employees. If more than one hour's service performed, shall be allowed rate of position filled on hourly basis, fractions of hours to be disregarded.’

“‘RULE 41—RATES OF PAY

“‘Present basic rates of pay of employees covered by this agreement shall remain in effect until changed as hereinafter provided. The ten per cent (10%) deduction from pay checks now being made shall continue in effect

through June 30, 1934; thereafter the deduction shall be seven and one-half per cent (7½%) to and including December 31 1934; Five per cent (5%) shall be similarly deducted from January 1 to and including March 31, 1935, when deductions shall cease; thereafter, change in basic rates shall be subject to Thirty (30) days' notice as provided in paragraph captioned "Termination."

"*Termination.*—This agreement to remain in effect until the 30th day of April 1935, and thereafter subject to thirty (30) days' written notice from either party to the other of a desire to change, which may be served on or after May 1, 1935."

The petitioners contend that under the provisions of Rule 41 the basic rate of 62 cents per hour became the established rate of truck drivers at Birmingham store house, effective May 1, 1934; that rule 31 requires the carrier to pay the established rate to employees required to drive trucks in the stores department; that Bohorfoush was entitled to the rate of 62 cents per hour, as truck driver, for the period herein stated.

The carrier states that the third truck referred to in the joint statement of facts was an old retired truck, used only for handling material in and about the shop yard, that the duty of driving this truck when necessary was assigned to storehouse man at the storehouse men's rate of pay, and such assignment had been in existence for a period of two years prior to the effective date of the agreement. The carrier contends that there is nothing in the agreement requiring the reclassification of work or positions, that the agreement contains no classification of work rule for the classes of employees covered in Scope Rule 1, and that the rates being paid for service performed when the agreement became effective were the "present basic rates of pay" continued in effect under the provisions of rule 41. The carrier further contends that the work of driving the shop truck at Birmingham was a part of the duties of storehouse men.

The Division further finds that the last paragraph of Rule 31 of the agreement is controlling in the instant case; that under the terms of that rule no reclassification of the position of storehouse man is involved, inasmuch as the rule provides for such assignments as are said to be in effect in this case. Nor is there any conflict in this conclusion with the provisions of Rule 41. We think it cannot be held that because it was the practice prior to the agreement to assign the operation of this truck to storehouse men at storehouse men's rates of pay that the practice is perpetuated under the agreement, because the language of the last paragraph of rule 31, while contemplating a continuation of such assignments, essentially provides further that work as truck driver, though performed by storehouse employees, shall be paid at the rate of the position (truck driver) if more than one hour of such work is performed.

AWARD

J. C. Bohorfoush shall be paid as provided by Rule 31 at the rate of 62 cents per hour for each hour engaged in driving the truck, from June 1, to August 10, 1934, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Ill., this 18th day of December, 1936.