

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of Raymond Brown and Asa P. Brown for restoration of their former positions as storehouse man at the Hayne, South Carolina, Roundhouse Sub-Storehouse as of October 5, 1934."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"Effective October 5, 1934, the positions of storehouse man held by Raymond Brown and Asa P. Brown at the Hayne, South Carolina, Roundhouse Sub-Storehouse were abolished and the employees in question were permitted to exercise their seniority in accordance with the rules of the storehouse employees' agreement of May 1, 1934.

"Prior to October 5, 1934, Raymond Brown was assigned to work as storehouse man from 3:00 P. M. to 11:00 P. M., and Asa P. Brown was assigned to work as storehouse man from 11:00 P. M. to 7:00 A. M.

"The duties of the positions consisted of issuing material and supplies kept at the sub-storehouse, prepare requisitions for such issues, assist in checking material stock and keeping material stock in order and storehouse floors clean. The duties of issuing oils and waste, loading and unloading material shipments were performed if, as, and when necessary.

"When the two positions of storehouse man were abolished the roundhouse foreman at Hayne was provided with a key to the sub-storehouse so that he might enter the same and obtain material when needed. A list of the material so obtained is left for the first shift storehouse man who prepared proper charge."

An agreement between the parties governing the hours of service and working conditions of storehouse employees and bearing effective date of May 1, 1934, was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employees were stated as follows:

"The duties of the position in question are duties which rightfully belong to employees coming within the scope of the storehouse employees' agreement, and so long as there is work to be performed it should be performed by employees coming within the scope of the agreement and not by employees of another department who are prohibited from performing craftsmen's duties in their own department, or by employees of some other craft.

"Rule 1—'Scope' of the storehouse employees' agreement carries the following note:

"Nothing in this agreement shall prevent the working of storehouse labor in shops or vice versa; this shall not, however, be done for the purpose of abolishing positions."

"At the time the agreement was entered into, it was, and had been for many, many years prior thereto, the practice to maintain positions of storehouse employees only when the material issued was sufficient in volume to justify the expense of maintaining such positions, and when the expense incident to the maintenance of such positions could not be justified, arrangements were made to have the material handled in the same manner that material has been handled on the second and third shifts at Hayne since October 5, 1934. Rule 40 of the agreement clearly authorizes a continuation of the methods and practices of handling material and supplies by other than Stores Department employees which were in effect at the time the storehouse employees' agreement was negotiated, and was incorporated for the purpose of protecting carrier in such changes when, as and if conditions warranted.

"There are no good grounds for the contention of the employees that in this case the provisions of Rule 36 of the agreement were violated. No new positions were created under a different title, nor was the change made for the purpose of reducing the rate of pay or evading the application of the rules. The two positions involved have not been removed from the scope of the agreement, but were simply abolished for the reason that the expense of maintaining the same could not be justified in view of the service required. If and when the amount of material to be issued is sufficient in volume to justify the maintenance of such positions, they will be reestablished and bulletined in the manner provided in the storehouse employees' agreement.

"In their position the employees quote Rule 41 and the 'Termination' clause of the agreement, and contend that 'the action of the carrier in this case was in violation of the termination clause of the above rule in that positions were removed from under the agreement without the requirements as provided in rule 41, and as further provided for in the amended Railway Labor Act.' The language of the rules in question is clear, and, after reading these rules, it will be manifest to anyone versed in the application of schedule rules that they have no application in the instant case. The basic rates of pay of storehouse employees at Hayne Storehouse have in no way been changed, nor have any of the other rules of the agreement been changed. All that was done was to abolish two unnecessary and unjustified positions and arrange for the small amount of material required on the second and third shifts to be handled in a manner that, as hereinbefore stated, is clearly authorized by Rule 40 of the agreement.

"While the employees contend in their submission that in this case there was a violation of the provisions of the amended Railway Labor Act, they fail to say what provisions of the Act were violated or in what respect. The carrier has not been advised upon what part of the amended Act they rely but denies there has been any violation thereof.

"In conclusion, the carrier insists—

"(a) That rules of storehouse employees' current agreement of May 1, 1934, do not support the employees' contention;

"(b) That Rule 40 of the agreement clearly authorizes the continuance of the past practice of many years' standing of having material and supplies handled by other than storehouse employees; and,

"(c) That storehouse employees on the second and third shifts at Hayne are not needed, and to maintain such positions could only result in unnecessary and unjustified expense and uneconomical operation.

"For these reasons, the claim of the employees should be denied and we ask that the Board so decide."

OPINION OF BOARD.—It is well established under collective agreements of the character here involved that while the carrier is free to abolish positions, such work as remains in connection with these positions must be performed by the class of employees to which the agreement applies. In the instant case the agreement is made by Rule 1 to apply to the work of storehousemen, and although the right of working storehouse labor in shops or vice versa is reserved, it is expressly stipulated that this right shall not be exercised for the purpose of abolishing positions. That some portion of the work of the abolished positions in the handling of materials and supplies did remain and is being performed by employees other than storehousemen appears to be amply supported by the record. The carrier relies upon Rule 40 of the agreement for justification of its procedure. This rule, however, was merely designed to pro-

test the carrier against being required to change methods and practices of handling materials and supplies by other than Store Department Employees which existed at the time of the negotiation of the agreement. It is in the nature of a saving clause with respect to past policy; it does not authorize the adoption of like policy from and after the date of the agreement. But while there has been a violation of the agreement as of October 5, 1934, it does not follow that the identical positions must necessarily be restored. The essence of the violation has consisted in the performance of the work of storehousemen by employees not embraced within the scope of the Storehouse Employees' Agreement, and the violation can be removed by restoring the work thus performed to employees falling within the scope of that agreement. Under these circumstances the equities of the situation will be fully met if the parties determine through negotiation the actual extent of the violation, the just measure of loss resulting therefrom for which compensation should be made, and the character of the arrangement whereby the work of storehousemen can be restored to employees covered by the Storehouse Employees' Agreement.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the facts of record disclose a violation of the operative agreement as of October 5, 1934.

AWARD

Claim sustained to the extent that it is herein found that the work of storehousemen is being performed by employees not embraced within the scope of the Storehouse Employees' Agreement. The parties are directed to determine through negotiation the actual extent of the violation, the just measure of loss resulting therefrom for which compensation should be made, and the character of the arrangement whereby the work of storehousemen can be restored to employees covered by the Storehouse Employees' Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 23rd day of February, 1937