

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of Adlai Critchfield, storehouse employee, Princeton, Indiana, for restoration of his former position as storehouse man as of May 1, 1935."

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

"Effective May 1, 1935, the position of storehouse man held by Adlai Critchfield at the Princeton, Indiana, Storehouse, was abolished. Prior to that date the duties of the position were to issue material and supplies, prepare requisitions for such issues, keep material stock in order and storehouse floors clean, issue oil, grease, and waste from the oil house and supply cabooses with the various materials and supplies as well as other miscellaneous storehouse work required at night, including the issuance of material and supplies to Mechanical Department employees and others on requisitions.

"A key to the storehouse was turned over to the shop foreman after May 1, 1935, and he and the other Mechanical Department employees enter and obtain or issue the material needed by that department at night during the time there is no storehouse man on duty."

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 or 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.'

"It was clearly intended under this note in the scope rule that storehouse positions were not to be abolished and the work turned over to the Mechanical Department employees.

"At the time the agreement was negotiated there were several small points on the railroad where the Mechanical Department employees handled the material. In order to prevent the storehouse employees from filing claims for the work rule 40 was written into the agreement. Rule 40 reads:

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 position was 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 position of storehouse man on the night shift has not been removed from the scope of the agreement, but was 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 position, it will be reestablished and bulletined to employees holding seniority as storehouse men in the Princeton Storehouse seniority district.

"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 a position was 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 men at Princeton 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 an unnecessary and unjustified position and arrange for the small amount of material required on the night shift 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 men; and,

"(c) That a storehouse man on the third shift at Princeton is not needed and to maintain such a position 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 position 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 protect 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 May 1, 1935, it does not follow that the identical position 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 employes 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 employes 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 employe involved in this dispute are respectively carrier and employe 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 May 1, 1935.

AWARD

Claim sustained to the extent that it is herein found that the work of storehousemen is being performed by employes 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 employes 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.