

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYES  
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim of H. M. Chaney, Class B Helper, Los Angeles District Stores, Southern Pacific Company (Pacific Lines), for pay for four days at rate of \$4.16 per day."

STATEMENT OF FACTS.—There is in evidence an agreement between the parties bearing effective date of February 1, 1922, and the following rules, or parts thereof, have been cited:

"RULE 1—SCOPE

"These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

"(1) Clerks—

"(a) Clerical Workers.

"(b) Machine Operators.

"(2) Other office, station, and store employees such as office boys, messengers, chore boys, train announcers, gatemen, baggage, and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switch board operators, elevator operators, office, station, and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses.

"*Exceptions.*—(a) These rules shall not apply to laborers on coal and ore docks, or to laborers on elevators, piers, wharves, or other water-front facilities not a part of the regular freight station forces; or to individuals where amounts of less than thirty dollars (\$30.00) per month are paid for special services which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duty of the carrier.

"RULE 3—BASIS OF PAY

"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, except employees whose duties require them to be away from their established headquarters performing service requiring them to work, wait, or travel, as regulated by train service and the character of their duties, will be paid a monthly wage to cover all service performed. 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 employees covered by this 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.

Same representative states that Chaney's work "was carried on during the time in question by Kenneth Webb, Asst. Supply Storekeeper, until approximately 12 noon November 30th." Clerks' current agreement does not contain any guarantee in reference to the number of days in a week, month, or year for which Class "B" Helper nor hourly rated employee will be compensated, neither is there any rule in agreement which restricts carrier from laying off Class B Helpers.

It has been the practice at all times since and prior to current agreement and is the practice at this time to lay off Class B Helpers on any day their services are not required, and when laid off are not and never have been paid for days on which they did not perform service.

**OPINION OF BOARD.**—The question of the jurisdiction of this Board was finally conceded by both sides at the hearing held, and therefore it is unnecessary to discuss the objections originally made thereto.

The next question which should be considered is whether or not Rule 3, by its terms, embraces Class B Helpers such as involved here and whether, therefore, Class B Helpers are entitled to the benefit of the guarantee provision contained in Rule 3.

Whether or not Class B Helpers are within Rule 3 depends upon the construction of Rule 1, hereinbefore quoted, which defines those entitled to the benefit of the rules of the Agreement and excepts those who are not entitled. We do not agree with the contention of the carrier that to conclude in favor of the employees would be to make a new rule. In our opinion, the question is purely one of construction. Only an interpretation of Rule 1, in connection with Rule 3, is asked. The particular question is whether or not a Class B Helper is within the provisions of Rule 1. If so, he is entitled to the benefit of the guarantee provision of Rule 3. Whether or not he is within Rule 1 depends upon the terms of said Rule. If Rule 1 does not include, within its terms, a Class B Helper, then said employee is not entitled to the benefit of Rule 3. In such case this Board can only deny the claim of the employee. In the former case the claim must be sustained. Neither result has the effect of adopting a new rule, but is merely interpreting the present rule.

In our opinion, a Class B Helper is clearly within the Scope Rule (Rule 1) and therefore entitled to the benefit of the guarantee provision of Rule 3. We believe that it is clear that some of the work which he does is clerical work within the meaning of subdivision 1 (a) of Rule 1. The duties of the Class B Helper here involved are performed in a Roundhouse Store located at Los Angeles, California. They consist of:

1. Packing and unpacking material.
2. Storing material in the department.
3. Assembling stock to fill orders.
4. Marketing shipments.
5. Filling requisitions.
6. Supplying cabooses.
7. Issuing material.
8. Keeping stock in order and clerical work incidental thereto.
9. Putting price tags on material.
10. Assisting Class A Helpers and Section Stockmen.

However, we are compelled to the conclusion that this employee is a store employee within the meaning of subdivision 2 of said rule, which has been quoted herein. The fact that this employee who works in a Roundhouse Store is a store employee is so evident as to require no extended discussion.

That a Class B Helper is not a laborer within the exceptions noted in Rule 1 is also so clear as to require no argument.

The fact that the position involved herein is carried on the payrolls as an hourly rated position instead of a daily rated position is not significant. Rule 3 has two provisions: (a) that positions covered by groups 1 and 2 of Rule 1 are to be paid on the daily rate basis, and (b) that positions covered by groups 1 and 2 of Rule 1 are guaranteed six days' pay per week except in case of holidays. In our opinion, the first provision cannot be construed to be a condition precedent to the second provision. The only condition precedent to the application of the guarantee provision in Rule 3 is that the position must be embraced by the groups defined in subdivisions 1 and 2 of Rule 1. Therefore, the fact that the carrier carries the position in question on an hourly rate basis on its payrolls does not remove the position from the application of the guarantee provision of Rule 3.

The only question which remains is whether or not the negotiations carried on between the representatives of the employes and the representatives of the carrier amount to a modification or an amendment of the application of the here pertinent Rules (1 and 3).

The negotiations referred to consist principally of an interchange of correspondence which is contained in the records as Exhibits 1-25.

The carrier contends that these negotiations amount to an agreement that Class B Helpers were not to be given the benefit of the guarantee provision of Rule 3. The employes, on the other hand, deny that any such agreement was reached, and, moreover, contend that even if an agreement had been reached, such agreement could not supersede the effect of Rule 3, because the procedure followed was not the proper procedure for a change in the Rules.

It is unnecessary to decide whether or not any agreement reached as a result of these negotiations would modify or amend the existing rules.

In our opinion, Exhibits 1-25 do not show that any agreement was reached which excluded Class B Helpers from the obligations of the guarantee provision of Rule 3. A brief review of the more pertinent portions of the correspondence contained in these Exhibits will suffice to establish this conclusion.

On April 5, 1926, Mr. R. W. Lang, General Chairman of the Brotherhood, wrote to Mr. A. J. Hancock, Assistant to the General Manager, an authorized representative of the carrier, requesting certain positions to be classified as entitled to the benefit of the guarantee provision of Rule 3. See Exhibit 7. Among the positions therein listed were the positions of Class B Store Helpers. Later a conference was held between Mr. Lang and Mr. Hancock. See Exhibit 8. Some correspondence followed. See Exhibits 9, 10, and 11.

On November 16, 1926, A. S. McKelligan, General Store Keeper of the carrier, wrote numerous letters to District Store Keepers instructing them that Class A Store Helpers were to be considered to be within the guarantee provision of Rule 3. He also stated that Class B Store Helpers were to be privileged to take the place of Store Department Laborers, junior in service, on days where the services of Class B Store Helpers were not required. See Exhibits 12, 13, 14, 15, 16, 17, and 18.

The next important document contained in the record is Exhibit 20. This Exhibit was a letter written by R. W. Lang to Mr. Hancock, with reference to the classification of employes that was made. Significant is the fact that in this letter Mr. Lang expressed some dissatisfaction with the conclusions reached by the carrier, and asked that supplemental instructions be issued outlining the status of all other employes listed in the original memorandum.

On November 30, 1926, Mr. Lang again wrote to Mr. Hancock (see Exhibit 21), commenting upon a certain erroneous classification with reference to Class B. Helpers and asked that investigation be made of the exact duties of certain Class B Helpers. He also stated that the employes could not accept the ruling in its then form because there were a large number of employes being improperly carried as Class B Helpers. Following this letter the record contains no indication of any agreement having been reached.

In our opinion the Exhibits do not establish the fact that a definite agreement was reached as the carrier contends, but rather show that negotiations were held with a view of reaching an agreement which was never consummated. While concerning certain matters the parties were in accord, there were numerous matters on which they never did agree. There is nothing showing that they agreed that Class B helpers were not within the guarantee provisions of Rule 3. On the contrary, the correspondence seems to indicate that the employes were at all times careful to preserve any and all rights Class B Helpers were entitled to under Rule 3.

A change in Agreement between the employer and the employes must be made in the proper manner by fully authorized representatives of the employes and of the carrier. There should always be a clear intention expressed to modify, amend, or forego application of existing rules. This Board should act with caution and should not find that a change in the rules was intended to be made by a subsequent agreement unless that agreement is certain in its terms and clearly indicates an intention to modify the Rules. To take a contrary view would be to weaken the binding effect and authority of presently existing Agreements between the carriers and the employes.

In our opinion the record falls far short of indicating a change in the rules as interpreted, and therefore the claim of the employes must be sustained.

**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 Class B Helpers are within the provisions of Rules 1 and 3 of the existing Agreement and therefore are entitled to the benefit of the guarantee provision of Rule 3.

**AWARD**

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 1st day of June 1937.