

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)**

STATEMENT OF CLAIM.—

"Shall vacancy in position of General Scrap Dock Foreman, Silvis, Ill., store, be bulletined and assigned under the provisions of Agreement, effective January 1, 1931 (as revised)?"

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

"On May 23, 1936, general circular was issued announcing the promotion of Mr. A. T. Kipping from position of General Scrap Dock Foreman to position of General Foreman, Silvis store, and appointment of Mr. C. A. Mart to vacancy created in position of General Scrap Dock Foreman.

"Position of General Scrap Dock Foreman was not bulletined as vacant and employees were not given an opportunity to make application for the vacancy."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, and the following rules thereof have been cited:

"RULE 1—SCOPE

"* * *

"Exceptions. * * * These rules shall not apply to * * * positions
* * * offices as follows:

"General Storekeeper.

"* * *

"Chief Clerk and Personal Stenographer.

"* * *

"* * *

"* * *

"General Foreman—Chicago, Horton, Shawnee, and Silvis.

"RULE 10—BULLETINS

"District and General Storekeeper Offices.

"Vacancies occurring or new positions created in the office of District Storekeeper and General Storekeeper will be bulletined in each of the District Storekeepers' offices, including the office of General Storekeeper at Silvis. When vacancy occurs or new position is created in office of District Storekeeper, same will also be bulletined over entire territory under the jurisdiction of the District Store in which vacancy occurs or new position is created. Vacancies occurring or new positions created at points under the jurisdiction of District Store (not including office proper of District Storekeeper) shall be bulletined over entire Store Department District, including office of District Storekeeper of the District. * * *

"RULE 27—ROSTER

"* * *

"(a) The roster will be revised and posted in January of each year, and will be open to protest for a period of thirty (30) days from date of posting and upon presentation of proof of error by employe or his representative, such error shall be corrected. General Chairman and Division Chairman will be furnished with copy of roster.

"(b) Effective with posting of roster January 1, 1932, protests on seniority dates for correction will be confined to names added since posting of previous annual roster.

"(c) Names of employes accepting official or supervisory positions not covered by these rules will be shown on the first roster posted following such appointments to official or supervisory positions and names omitted from future rosters, until employe returns to service on position covered by this agreement as per Rule 29."

POSITION OF EMPLOYES.—

"Rule 10 (as revised) provides that new positions and vacancies in positions of clerks and foremen be bulletined to all such employes in the Store Department over the entire system.

"Employes contend that position of General Foreman, Silvis, now occupied by Mr. A. T. Kipping, party appointed May 23rd, is the only position of foreman at Silvis store excepted from the application of our rules. Position of General Scrap Dock Foreman has not been vacant since working rules agreement became effective on the Rock Island until the transfer of Mr. Kipping on May 23, 1936, and inasmuch as the rules specifically provide for only one foreman in the Store Department at Silvis, there was no occasion for raising the question as to whether or not the carrier was contending that this position was not covered by the rules. All positions excepted from the application of our rules are specifically listed in the working rules agreement and it will be noted that in the reference to excepted positions at Silvis provision is made for only one position of foreman. The rule does not read 'foremen,' but, rather, reference is used in the singular, and not the plural.

"The rate of pay on position of General Scrap Dock Foreman was \$240.00 per month and the salary on position of General Foreman Silvis Store is \$255.00 per month. Effective May 23, 1936, when Mr. C. A. Mart was placed on position of General Scrap Dock Foreman the rate was reduced to \$225.00 per month.

"Employes ask that position of General Scrap Dock Foreman be bulletined in the regular way to all employes in the Store Department seniority district as provided in the working rules agreement."

POSITION OF CARRIER.—The carrier contends that:

"The position of General Scrap Dock Foreman is an excepted supervisory position and, with reference to Section 'F' on page 11 of the 1931 agreement, we contend that under this agreement all General Foremen are excepted. The term 'General Foreman' as used in this agreement does not indicate there is only one position under the agreement for there is more than one, for the reason that there were in the original agreement four points mentioned—namely, Silvis, Horton, Chicago, and Shawnee, and if there is more than one, because of different locations, there could be more than one at a station.

"The position of General Scrap Dock Foreman was made a supervisory position May 1, 1920, and all pay reductions, increases, etc., since that date have been made on the same basis as other official and excepted positions, and no overtime has been paid on this position since May 1, 1920. * * *

"The duties and the responsibilities of the position of General Scrap Dock Foreman are, briefly:

"To supervise two assistant scrap dock foremen, also crane operators, crane directors, shear operators, scrap cutters, and other mechanical employees under Class 4, Rule 27, of the clerks' agreement, as well as scrap sorters under Class 3 of Rule 27 of the agreement.

"The General Scrap Dock Foreman is also charged with the responsibility for the proper grading and sale of scrap, and our sales of scrap

from the Silvis dock have averaged \$120,000.00 per month in recent months.

"He also must see that all usable material is recovered from the scrap and reclaimed for further use.

"The position also requires some traveling."

OPINION OF BOARD.—The question at issue in this instant case is whether or not the position of General Scrap Dock Foreman at Silvis, Illinois, store is to be bulletined by the carrier and assigned under the provisions of the current agreement with the employees effective Jan. 1, 1931, or be excepted from the agreement between the parties.

In support of their contention the employees cite Rule 1 (Scope), paragraph (f) and Rule 10 of the agreement and quote various decisions as having a bearing on the claim.

The carrier contends that the position of General Scrap Dock Foreman is an excepted supervisory position and has been so considered and classified over a period of years.

The Board agrees with the decisions quoted by the employees insofar as they pertain to the obligations assumed in signed contracts and agreements, and affirms that the violation or repeated violation of an agreement does not legalize the act or relieve either carrier or employees of their obligations under the contract and agreement.

With respect, however, to the application of Rule 1, Scope, paragraph (f) of the instant case, it is the opinion of the Board that the singular term of "General Foreman" as used in paragraph (f) of the rule cannot properly be interpreted as being restricted to only one individual at each of the points designated, but may be equally applied to one or more General Foremen who are employed in executive capacities to direct and supervise the conduct and operation of separate and specified departments of the carrier's service.

With respect to the term of "Scrap Dock" which in the instant case has been added to the title of General Foreman, it is the opinion of the Board that this addition is simply descriptive of the class of duty or the department to which the employee or officer is assigned and in which he serves in an executive capacity, and that this addition does not invalidate the term of "General Foreman" as excepted in paragraph (f) of the rule.

Under these circumstances and in view of the duties and requirements of the position under discussion, as outlined in the evidence submitted, it is the opinion of the Board that the position of General Scrap Dock Foreman is a supervisory one and is properly excepted by the carrier under the application of Rule 1, paragraph (f) of the agreement between the employees and the carrier.

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 employee involved in this dispute are respectively carrier and employee 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 there is no basis for disturbing the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 30th day of August, 1937.