

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

**STATEMENT OF CLAIM:** "Claim of U. M. Boles for the restoration of position of warehouse at Cabool, Missouri, and difference in pay between rate of \$4.30 per day and the rate he has received on other positions paying lesser rates retroactive to July 12, 1936."

**STATEMENT OF FACTS:** In their ex parte submission the employees stated the facts as follows:

"(1) As a result of Award 241 of the Third Division, National Railroad Adjustment Board, issued April 16, 1936, and effective April 1, 1936, the previously existing position at Cabool, Mo. classified as Warehouseman and rated at \$4.30 per day was re-established.

"(2) U. M. Boles was the regularly assigned incumbent of the above mentioned position up to and including July 11, 1936, as a result of application of the rules of the Clerks' Agreement.

"(3) The ordinary and regular duties assigned to said position and required of U. M. Boles as the incumbent thereof up to and including July 11, 1936, were:

- A. Checking Freight inbound and outbound;
- B. Loading and unloading freight into and out of cars handled in two local freight trains daily, except Sundays;
- C. Loading and unloading baggage, mail and express into and out of cars handled in four passenger trains daily, except Sundays;
- D. Sealing cars and maintaining seal records;
- E. Preparing Forms 34 and 34 A reports;
- F. Assist in the preparation and rendition of Forms 35 and 35 A reports;
- G. Rendering postal notices of arrival of freight;
- H. Billing express shipments;
- I. Delivering to and receiving from patrons freight, express and baggage;

First 4 Months of Year	Total Revenue	No. Items Handled Thru Accounts	Tons L. C. L. Freight Handled
1932	\$51,617.50	2,008	261
1933	45,404.10	1,697	258
1934	48,897.75	1,821	157.5
1935	46,394.11	1,838	183.7
1936	42,846.92	1,765	185.8"

"We have shown that the employment of a man to do janitor work at \$10.00 per month, is permissible under rules of the Agreement. The claim, therefore, is that we had no right to discontinue warehouseman position and have the duties assigned to this position while it was in existence taken care of by the agent-telegrapher and telegrapher-clerk both of which positions come under the Agreement between the carrier and the Order Railroad Telegraphers.

"It was contended this was a violation of Rules 1, 83, and 96 of the Clerks' Agreement. We contend there was no violation whatever, of these Rules. Rule 1 states that it governs hours of service, wages and working conditions of certain employes and lists what such employes are. It does not include agents, telegraphers or employes covered by other Agreements. Agents and telegraphers all perform more-or-less clerical and other station work, and have always done so. It is recognized that they do this as a matter of universal practice on this and other railroads. In fact, positions other than agents and telegraphers are specifically listed as coming under the Agreement with the Order Railroad Telegraphers, whose principal service is of a clerical nature such as ticket agents and car distributors. We refer to submission of carrier in Docket CL-377 for a statement showing where cashier and clerical positions have in the past been taken off and cashier-telegrapher or telegrapher positions put on. Also to statement showing that as of August 1, 1936, we had the following number of employes of classifications shown:

167—non-telegraph agents  
302—agent telegraphers  
271—telegraphers at stations  
16—telegraphers in commercial offices and Superintendents' offices

All of these agents, agent-telegraphers and telegraphers perform clerical work to a more-or-less extent.

"Am also attaching statement showing station force at all stations on the Southern Division, exclusive of Memphis and Birmingham Terminals. You will note at many of these stations there are no clerks or warehousemen employed and it is a self-evident fact that at all of these stations there is more-or-less clerical work to be done.

"The other rules in the Clerks' Agreement referred to by the employes in the handling of this case on the property, have no bearing on the point at issue. There is no rule whatever in the Agreement preventing carrier from discontinuing a position. A case very similar in all respects to this one is covered by Decision 288 of the United States Railroad Labor Board.

"To hold that we do not have a right to discontinue a position or that we do not have a right to have agents, agent-telegraphers or telegraphers at a station do clerical work would be directly contrary to practice now prevailing and that has prevailed ever since the railroads were operated, and could not be based on any rules in the Clerks' Agreement or any intent at the time the Agreement was made. It would create an intolerable, chaotic condition on this and other railroads."

**OPINION OF BOARD:** In this claim presented by the employes in behalf of U. M. Boles for the restoration of position of warehouseman at Cabool, Missouri, and the retroactive payment from July 12, 1936, of the

difference in pay between rate of \$4.30 per day and the rate claimant received on other positions paying a lesser rate, attention is called to a previous dispute involving the same employe and the same position as this instant claim; and in which a claim was made for the difference in rate between that of station helper at \$2.12 per day and that of warehouseman at \$4.30 per day. This previous claim was disposed of by Award No. 241 of this Third Division of the National Railroad Adjustment Board, rendered April 16, 1936, in which the position of station helper was ordered reclassified and rerated as warehouseman, rate \$4.30 per day, effective April 1, 1936.

In the present claim the employes contend that effective July 12, 1936, the carrier violated the rules and terms of the existing agreement between the parties, effective September 15, 1924, by abolishing or discontinuing the reclassified position of warehouseman and assigning the work formerly performed by Mr. Boles, in part to a janitor who was paid \$10.00 per month, and the clerical and other station work to other employes of the station not covered by the Agreement between the parties.

The carrier submits that the claim is divided into two contentions:

First, as to the rights of the carrier to arrange with an outsider to care for the janitor work of the station, which required only a portion of the individual's time, at \$10.00 per month, and second, as to the carrier's right to abolish the position of warehouseman and have such work as remained performed by the Agent-Telegrapher and the Telegrapher-Clerk.

As to the first submission the carrier contends that Exception (a) to Rule 1 of the Agreement permits the engagement of the services of an outsider at \$10.00 per month to take care of the janitor work at the station where such service requires only a portion of the time of the individual from outside employment.

As to the second submission the carrier contends that there was no violation of the Clerks' Agreement in abolishing the position of warehouseman and assigning an outside party to keep the station clean at a rate of \$10.00 per month and having such work as remained performed by the Agent-Telegrapher and the Telegrapher-Clerk.

Each of the parties to this dispute have submitted various decisions of the United States Railroad Labor Board and other awards, rulings and decisions made and rendered as having a bearing on the subject at issue in this instant claim. These cases, rulings, awards and decisions however, while bearing some similarity to the conditions of the present claim are dissimilar in other respects and emphasize the statements made that each claim must be decided upon its merits, or the conditions involved, and on the basis of the established agreements and without regard to the conditions existing at other points.

In this instant case the position of warehouseman and the duties attached to that position were recognized as coming under the wage and rules Agreement between the parties, and reclassified as that of a warehouseman at a rate of \$4.30 per day, effective on April 1, 1936, in accordance with the findings of Award Number 241 of this Board rendered on April 16, 1936.

Following the reclassification and rerating of this position as warehouseman the carrier, on July 12, 1936, abolished or discontinued the position and assigned a part of the established duties, or janitor work, of the position to an outside employe, and the balance, or clerical and other duties, to the remaining employes at the station, none of whom were covered by the Clerks' Agreement.

In the evidence submitted in this claim, while the carrier has cited the requirement of economic operation as a basis for the abolishing or discontinuance of the position as warehouseman, and has cited Exception (a) to

Rule 1 of the Agreement between the parties as justifying its action in assigning the janitor work to an outside employe, and an employe not covered by the Clerks' Agreement, and the balance or clerical and other duties to the remaining employes of the station and not within the scope of the existing agreement, the fact remains and is clearly evidenced that, while there may or may not have been some seasonal or other reduction in work of the warehouseman, a substantial portion of the work did remain as was evidenced in the appointment of a janitor and the additional distribution of the work made by the carrier to other employes of the station.

It has been indicated in this claim that under certain conditions the work of the clerks and the telegraphers, each of whom operate under separate agreements is interchangeable. Nothing however has been introduced indicating any agreement between the two employes' organizations, or between such organizations and the carrier, and under these conditions the Board can only consider the conditions of this claim on the basis of the existing agreement between the parties to this dispute.

Insofar as the application and interpretation of Exception (a) to Rule 1 of the Agreement is concerned in this case, while the board cannot agree with the application and interpretation made by the carrier, the fact remains that this position of warehouseman was reestablished and confirmed by this Board in an award rendered on April 16, 1936, and effective April 1, 1936, as a position negotiated into the agreement between the parties; and at the time the change was made by the carrier and the position of warehouseman abolished a substantial portion of the work of that position did remain as was evidenced by the appointment and assignments made.

In view of these conditions it is the opinion of the Board that the carrier violated the spirit and terms of the existing agreement in abolishing the position of warehouseman and assigning the work and duties of that position to employes outside of the agreement without conference and negotiation between the parties.

**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 in abolishing the position of warehouseman and assigning the work and duties of that position to employes outside of the Agreement without conference and agreement the carrier violated the terms of the existing Agreement between the parties.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1937.