

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim for restoration of position of Warehouse Foreman, rate \$142.00 per month, El Reno, Okla., freight house, and reimbursement of all employees affected for monetary loss sustained account this position being discontinued effective November 12th, 1936."

EMPLOYEES' STATEMENT OF FACTS: "Effective November 12th, 1936, position of Warehouse Foreman at the freight house, El Reno, Okla., was discontinued and the work formerly handled by the Warehouse Foreman distributed among the remaining force in the Agent's office and on the platform. At the time this position was discontinued the following force was employed in the Agent's office:

Title	Rate
Chief Clerk-Cashier, .	\$162.00
Rate Clerk,	147.00
Claim Clerk,	132.00
Car Clerk,	124.50
Bill Clerk,	124.50
Warehouse Foreman,	142.00
Truckers,	.45¢ per hour.

"This reduction in force and re-assignment of work was made without conference with the representatives of the Clerks' Organization. Mr. Charles T. Bradney was on the position of Warehouse Foreman when the position was discontinued and asserted his seniority on position of Claim Clerk, rate \$132.00, and since placing himself on this position November 24th, 1936, he has been assigned to handling the same work as he performed under the title of Warehouse Foreman and, in addition thereto, handling some of the claims."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, and the following rules thereof and joint interpretation (June 21, 1933) thereto, read:

"RULE 68. NEW POSITIONS. The salaries for new positions will be in conformity with the salaries of analogous positions (of similar kind and class) in comparable localities."

and a Claim Clerk. The rates of pay of these employees are in excess of those paid to positions of Receiving Clerk and Check Clerk when such positions were in existence at El Reno.

"It will no doubt be of interest to your Board to note a decision reached by the United States Railroad Labor Board in its Decision 3835 (copy attached) on a somewhat similar situation existing on the Rock Island some years ago, wherein the position of Chief Clerk to the Agent at Ardmore, Oklahoma, was abolished, the supervisory duties formerly handled by the Chief Clerk being assumed by the Agent and only the ordinary clerical duties required of such a position were assumed by the newly established position of General Clerk in the same office. It is interesting to note that the Labor Board held that because the General Clerk was not held responsible for work of other employees, the Agent having assumed such responsibility, that the new position did not in any sense constitute a violation of Rule 61, cited by the employees, which is now Rule 69 to which the employees have referred in this case.

"There being no operating necessity for a position of Warehouse Foreman at El Reno, and the routine clerical work formerly handled by the Warehouse Foreman having been distributed to other positions in accordance with the intent of the Clerical Schedule, the employees' contention that the contract has been violated is not substantiated and the claim should be declined. There is no contract obligation requiring the Carrier to continue positions that are not needed."

OPINION OF BOARD: The petitioner argues that under the provisions of Rule 69 and joint interpretation of June 21, 1933, thereto, the carrier cannot act arbitrarily in discontinuing a position as was done in this case; that when a position is discontinued and there are remaining duties, the reassigning of such remaining duties to other positions must be "handled in conference" with the employees.

The carrier contends that the principle enunciated in Rule 68 sets up a guide for determining proper rates of pay for each position; that Rule 69 does not nullify Rule 68, but establishes a supplemental principle that rates of pay are to be maintained and adjustments made when there is a "sufficient" change in the duties or responsibilities or character of work required on a position, and that in the instant case the rules were complied with.

While the carrier may have been within its right in the discontinuance of the position, under the circumstances disclosed of record it certainly was not free to reassign the remaining duties without conference with the committee.

Rule 69 and its interpretation provide, among other things, that, "Where remaining duties are reassigned, the positions affected will be handled in conference in conformity with Rule 69." This requirement of the rule was not complied with in the instant case.

When the representative of the employees requested the Superintendent for a conference to develop all facts in connection with the case, in accordance with the General Manager's promise of November 25, 1936, the Superintendent stated that he would prepare such joint statement of facts as requested by the General Chairman. Later the Superintendent advised that he saw no necessity for preparing such joint statement, as he considered there was no basis for the claim filed as a result of the agreement violation, alleged by the petitioner. This conduct upon the part of the Superintendent shows a further disregard for assurances given to the employees by the General Manager.

The carrier states in its rebuttal argument that, "We are willing at any time to make a check of the work at El Reno." This is what the officer of the carrier should have done in keeping with Rule 69 and interpretation thereto, at the time the change in the work was made, or, at least, it should have been done when such request was made for the joint check by the representative of the employees.

The arbitrary handling of the matter leaves the Board without other remedy for the disregard of the rules than to grant the claim as made. Had the rule as to conference been complied with in good faith and the parties, although recognizing the abolition of the position was warranted, been unable to agree concerning the reassignment of remaining duties, a different claim than that here presented would result.

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 agreement was violated by the carrier as contended by the petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1938.