

Award No. 608

Docket No. CL-604

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 AND PACIFIC
RAILWAY COMPANY**

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

STATEMENT OF CLAIM: "Claim for reinstatement of position of Assistant Warehouse Foreman, rate \$134.50 per month, Oklahoma City freight platform, and reimbursement for wage loss suffered by employees affected since November 16th, 1936, date title and rate of position was discontinued."

EMPLOYEES' STATEMENT OF FACTS: "On May 4th, 1936, the title of position of Assistant Warehouse Foreman at Oklahoma City, rate \$134.50 per month, was discontinued on the payroll. Effective May 5th, 1936, position of Check Clerk, rate \$122.00 per month, was put on. Position of Check Clerk performed the same duties as had been performed by the position of Assistant Warehouse Foreman for the past several years. The position of Assistant Warehouse Foreman at Oklahoma City had been in existence and worked regularly since prior to 1917. The rate of pay on this position had been built up through the application of various wage orders by the Railroad Labor Board as well as through direct negotiations with the carrier by the employees' representatives. This change in rate and title on the position was put into effect without negotiations or conference with representatives of the employees.

"Upon protest by the employees' organization the title of Assistant Warehouse Foreman and the rate of \$134.50 was reinstated effective September 12th, 1936, and employees reimbursed for monetary loss sustained account change in rate and title effective May 4th, 1936. On November 16th, 1936 the position of Assistant Warehouse Foreman, which had been reinstated September 12th, 1936, was discontinued and the work formerly handled on the position distributed to other employees on the freight house platform at Oklahoma City. This reduction in force and distribution of work was placed in effect without conference with the employees' committee. Effective May 4th, 1937, new position of Check Clerk, rate \$122.00 month, was put on to take care of part of the work formerly handled by the Assistant Warehouse Foreman."

POSITION OF EMPLOYEES: "Rule 69 of Agreement as revised and effective January 1st, 1931, reads as follows:

'**RULE 69. ADJUSTMENT OF RATES.** When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted, but established positions will not

"In May 1936, when it was developed the Assistant Warehouse Foreman was then performing none of the duties required of such a position, it was discontinued, and because there was Check Clerk's work, also truckers' work, to be performed, a new position of Check Clerk was established at the rate of \$122.00 per month, which is the negotiated and agreed to rate for a Check Clerk on the Oklahoma City Warehouse platform. When this action was taken the clerks' organization contended the position of Assistant Warehouse Foreman had been improperly discontinued and the work of the position assigned to another position at a lesser rate of pay. When this complaint reached the General Manager, although his investigation developed the position was doing only work of a Check Clerk and had been doing only such work for some time past, he thought it best to meet the request of the organization and reinstated the rate of Warehouse Foreman on the position, with the understanding reached with the representative of the organization that a check would be made by a representative of the organization and the carrier to determine what rate should be paid for the character of work being performed by the so-called Assistant Warehouse Foreman. When the position was re-established in September 1936, request was promptly made by the carrier's Superintendent on the General Chairman of the organization for a meeting at Oklahoma City to check the work of this position. The General Chairman first advised his time would be taken up until after the 21st of September, but after that date he would get in touch with the Superintendent and arrange for an early check. Nothing further being heard from the General Chairman, the matter was handled several times with him requesting that he be in Oklahoma City to make the check or designate someone else to represent the organization, but without success; and when it became apparent to the carrier's officers that no joint check could be secured, the carrier's officers concluded they had made every consistent effort contemplated by the agreement to comply therewith, and, therefore, the Assistant Warehouse Foreman position was again abolished.

"Here the carrier was confronted with a situation where it was known and could be shown beyond question of doubt that a position had been permitted to continue for some four or five years under an improper title and carrying a rate which had been established when such rate and title were proper because of the work performed, when, as a matter of fact, the duties and responsibilities of the position had decreased to such an extent that such a position and rate were no longer justified. But the employees apparently did not care to give consideration to the carrier's request for a conference, and it was felt every obligation of the carrier under the contract was fulfilled. The rights of the carrier should not be destroyed by the refusal of the employees to do the very thing the contract was alleged to require in this case, i. e., making a check of the work.

"We say we did not violate the clerical contract when we established a position and paid a rate of pay on such position commensurate with the duties required on the position. That is exactly what we did at Oklahoma City.

"We note that an apparently similar situation existed on the Colorado and Southern and was disposed of by your Board in your Award 303, but we are not familiar with all the facts in connection with that case.

"The holder of the position of check clerk later established at Oklahoma City is not performing any of the supervisory duties which would be required of an Assistant Warehouse Foreman and is performing only the work of a Check Clerk and Trucker and being paid a Check Clerk's rate.

"The contention of the employees should be denied. They had an opportunity to determine with the carrier the correctness of the carrier's contentions, but failed to avail themselves of that opportunity."

OPINION OF BOARD: The situation presented in this case is directly the opposite to that involved in the preceding award No. 607. Here the carrier made a good faith effort at compliance with the requirement of the rule for conference and deferred taking action for nearly two months while attempting to obtain such conference with the organization. Under such circumstances this claim as made is completely devoid of merit and should be denied without

prejudice however to the right of the organization to now seek conference on the reassignment of duties involved and failing agreement to return to the Board with such claim as it may assert on that score.

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 carrier was justified in proceeding as it did in view of the failure of organization representative to confer with it, but this is without prejudice to any possible claim for readjustment account of the reassignment.

AWARD

Claim denied without prejudice to right to present claim concerning reassignment involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1938.