

**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 of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Chicago, Rock Island and Pacific Railway for the restoration, effective July 15th, 1936, of position of Refrigerator Inspector, rate \$172.00 per month, Belleville, Kan., yard, and reimbursement of monetary loss sustained by any employes due to discontinuing this position of Refrigerator Inspector."

EMPLOYES' STATEMENT OF FACTS: "For a number of years prior to July 15th, 1936, there was maintained at Belleville, Kans. yard a position of refrigerator inspector, rate \$172.00 per month. The duties of this position consisted of inspecting all perishable loads to see that proper refrigeration and ventilation was maintained; making 100 Reports, keeping book record of all perishable, supervising icing of any cars requiring ice and proper application of heaters to all perishable shipments passing through Belleville yard. On July 15th, 1936, position of Refrigerator Inspector carried on the system payroll of the Superintendent of Refrigerator Service was discontinued at Belleville, Kans., and all of the work formerly handled by this position was turned over to the yard clerks and baggageman."

POSITION OF EMPLOYES: "Mediation agreement appearing on Page 41 of Agreement governing hours of service and working conditions, as revised and effective January 1st, 1931, reads as follows:

ICING AND REFRIGERATOR INSPECTORS.

These rules will apply to the positions of Refrigerator and Icing inspectors carried on the system payroll of Superintendent of Refrigerator Service with the following exceptions:

(a) Icing and Refrigerator Inspectors carried on system payroll will be included on a system seniority district roster. Vacancies and new positions will be bulletined to all employes on the system seniority roster, and vacancies or new positions not filled from employes on this system seniority roster will be bulletined over the operating division seniority district where vacancy or new position is located. Division employe assigned such vacancy will retain his seniority on the division

at Belleville and the hours during which they may be called upon to perform Refrigerator Department work, are as follows:

Night Baggage-man—7:30 P. M. to 4:30 A. M.—rate of pay \$105.00 per month.

First Trick Yard Clerk—7:00 A. M. to 3:00 P. M.—rate of pay \$112.00 per month.

Second Trick Yard Clerk—6:00 P. M. to 7:30 P. M.—rate of pay \$109.50 per month.

and the Agent protects any necessary work of this character between 3:00 P. M. and 6:00 P. M. and likewise prepares, as a matter of routine station work, some of the forms formerly prepared by the Refrigerator Inspector.

"The positions at Belleville required to assume the remaining work of the Refrigerator Inspector are all receiving relatively higher rates of pay than the rate of the Refrigerator Inspector, and therefore there can be no charge that work of a higher rated position was assigned to a lower rated position.

"Rule 64 of the clerical agreement outlines the manner in which monthly rates will be figured for monthly rated positions, but this rule does not apply to Refrigerator Inspectors carried on the payroll of the Superintendent of Refrigerator Service, the method of figuring their monthly compensation being governed by the memorandum agreement on Page 41 of the clerical schedule effective January 1, 1931.

"The assigned hours of the Refrigerator Inspectors at Belleville as given to the Clerk's representative and concurred in by him when the memorandum agreement of December 5, 1930, on page 41 of the agreement was consummated, shows one Refrigerator Inspector at Belleville, Kansas, to protect refrigerator service for 24 hours daily at rate of \$172.00 per month. (See Exhibit 'A' attached.)

"To require reinstatement of the position of Refrigerator Inspector at Belleville would only serve to burden the Carrier with an unnecessary expense; and since the maintenance of such a position is not obligatory under the clerical schedule, nor has the schedule been violated in any way because of discontinuance of the Refrigerator Inspector position, the claim of the employees should be declined."

OPINION OF BOARD: This is another of the series of cases referred to in Award Number 607 and is similar to Award Number 610.

It has been proven abundantly in the record of this case that the carrier violated Rule 69 and Joint Interpretation thereto when it arbitrarily reassigned, without conference, work of the Refrigerator Inspector to Yard Clerks and the Night Baggage-man at Belleville, Kan.; that the carrier violated the Mediation Agreement of December 5, 1930, covering positions of Refrigerator and Icing Inspectors, when it assigned work of employees in that system seniority district to employees holding seniority rights under Rule 5, and that it violated Rule 33 in consolidating seniority districts or parts thereof without regard to the rights or duties of the employees involved.

The carrier, therefore, should restore the position in question, and if conditions warrant the rearrangement of forces and the reassigning of work, it may proceed under the provisions of the agreement 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 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 violated Rules 5, 33, 69 and Joint Interpretation to the latter rule of the current agreement, and the Mediation Agreement of December 5, 1930.

AWARD

Claim sustained for restoration of positions and reparation to affected employees for wage losses sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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