

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that a position of Lumber Yard Foreman established at Como Store should be bulletined to employes covered by Clerks' Agreement, and that Mr. Geo. Klehm should be paid the difference between the rate paid to the Lumber Yard Foreman and what he has earned on his position as Section Stockman, retroactive to the date the position of Lumber Yard Foreman was established."

EMPLOYES' STATEMENT OF FACTS: "On August 18, 1937, a position designated as Lumber Yard Foreman was established at Como Store. Mr. James Bullock was placed on the position without the issuance of a bulletin. Employes requested that the job be bulletined. When this was denied, claim was filed that the job should be bulletined. The Carrier contended that this is an excepted position and declined to issue the bulletin as requested."

CARRIER'S STATEMENT OF FACTS: "Position of Lumber Yard Foreman was in existence at Como Store prior to September 1, 1933, on which date the position was abolished. That position was filled as an excepted position without bulletining it under schedule rules. Position of Lumber Yard Foreman at Como was established August 18, 1937, and was continued in existence until September 1, 1938, on which date the position was discontinued."

"When the position of Lumber Yard Foreman was established effective August 18, 1937, it was filled as an excepted position without bulletining under the rules of the Clerks' Schedule."

"During the period that the Lumber Yard Foreman's position was in existence from August 18, 1937, to September 1, 1938, it had under its supervision a work foreman and two lumbermen. The positions of lumbermen perform the same service as work foremen and are paid the same rate as work foremen, namely; 61 cents per hour. In addition, store laborers, the number of which varied dependent upon the amount of work that was to be performed, were employed in the lumber yard; these laborers worked under the direct supervision of the lumbermen and work foremen, who reported to the Lumber Yard Foreman."

POSITION OF EMPLOYES: "It is the contention of the Employes that the position of Lumber Yard Foreman is not one of the positions mentioned in the list of 'Exceptions' in Rule 1, Clerks' Agreement. The Carrier has

"For many years Lumber Yard Foremen have been employed in the large stores of this Railway. These Lumber Yard Foremen have had sub-foremen, namely; work foremen and lumbermen, working under them. The Lumber Yard Foreman's position has always been considered as an excepted position.

"The facts in the case and the schedule rules applied to those facts clearly demonstrate that there is no basis for the employees' claim that the Lumber Yard Foreman's position is not an excepted one. The plain language of the rule, namely; 'Foremen who supervise sub-foremen' sustains the carrier's position that the position in question is an excepted one and, therefore, not subject to the bulletin rule of the schedule."

There is in evidence an agreement between the parties bearing effective date of August 15, 1922, and the rules hereinbefore quoted are a part thereof.

OPINION OF BOARD: A position of Lumber Yard Foreman was created August 18, 1937 at the Como Store of carrier and was filled by appointment. It was later abolished effective September 1, 1938. The claim is that the position comes under the Clerks' Agreement and should have been bulletined in accordance with the rules of said agreement.

The case turns on whether the Lumber Yard Foreman regularly supervised sub-foreman. If the record shows that he did then the position is excepted from the current agreement.

The record shows that the position of Lumber Yard Foreman was in existence at Como Store for some years prior to September 1, 1933 on which date the position was abolished. It was filled during that period as an excepted position. The record also shows the positions and number of employees at the store in 1923, 1928, 1933, and 1938. It shows classification of the positions to be the same, but a fluctuation in the number of employees.

Carrier contends that the occupants of three positions are sub-foreman, viz., one working foreman and two lumbermen. The claim is not satisfactorily controverted by any facts submitted by Petitioner. In fact Petitioner admits that the employees holding these positions have other employees working under them but contends that they are not sub-foremen as that term is used in the agreement. The term is not defined in the agreement and this Board is unwilling to say that any employee who has supervision over other employees is not in fact a sub-foreman. The basic difficulty, of course, lies in the language of the rule but this Board has no authority to change the rule.

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 no violation of the agreement is shown.

AWARD

Claim denied,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of September, 1939.