

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

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

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

STATEMENT OF CLAIM: "Claim of the Rock Island System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, on the Chicago, Rock Island and Pacific Railway, for reinstatement of position of mail helper, rate \$102.80 per month, El Reno, Okla. passenger station, and reimbursement of all employes for any monetary loss sustained account this position being discontinued September 6th, 1938."

EMPLOYES' STATEMENT OF FACTS: "Effective December 1st, 1937, two positions of mail helper, rate \$102.80 per month, were discontinued at El Reno, Okla. passenger station. The Superintendent and Division Chairman jointly signed statement of facts as follows:

'El Reno, Okla., Jan. 15, 1938.
'File 2248-2

'Statement of facts:

'Position of Janitor-Baggage-helper, rate \$102.80 per month, assigned hours 5:10 A. M. to 2:10 P. M., at El Reno Passenger Station, discontinued effective December 1, 1937, also effective December 28, 1937, position of mail helper, rate \$102.80, assigned hours 6:00 P. M. to 3:00 A. M., was discontinued.

'Assigned hours of mail and baggage helpers before and after reduction effected:

'Before change

'Harry Noble, Janitor Helper	— 5:10 AM to 2:10 PM with 1 hour meal
C. C. Kearney, Mail Helper	— 11:25 PM to 8:25 AM " 1 " "
H. Lambert, Baggage Helper	— 3:15 PM to 12:15 AM " 1 " "
H. B. Johnson, Mail Helper	— 8:00 PM to 5:00 AM " 1 " "
Van Niles, Mail Helper	— 11:00 PM to 8:00 AM " 1 " "
Chas. Boston, Mail Helper	— 6:00 PM to 3:00 AM " 1 " "

'After change

C. C. Kearney, Mail Helper	— 11:25 PM to 8:25 AM with 1 hour meal
Van Niles, Mail Helper	— 11:00 PM to 8:00 AM " 1 " "
H. Lambert, Baggage Helper	— 7:00 PM to 4:00 AM " 1 " "
H. B. Johnson, Mail Helper	— 8:00 PM to 5:00 AM " 1 " "

at some other stations would be handled by employees holding seniority in class 2 and/or class 3, because at those other stations there might be sufficient of such work to warrant a full time employee on such class 2 or 3 work.

"We wish to comment briefly on the statement contained in our statement of facts, showing the disposition and reassignment of work from the discontinued position of mail helpers.

"It will be noted that Division Chairman Crites, in his statement, sets up as his reason for objecting to the proposal 'the abolishing of an eight hour position, duties of which are devoted **exclusively to Class 2 work . . .**' (Emphasis added) This is not a correct statement. Of the eight hours work assigned to the mail helper, two hours work is described as 'janitor work.' Janitors carry seniority in class 3 seniority division. Mr. Crites' statement is therefore not correct. Seventy-five per cent of the time of the mail helper was devoted to 'class 2 work,' while twenty-five per cent of his time was devoted to class 3 work. In this connection, it is interesting to note the inconsistency of the employees' contention in this case, in that they are saying that a class 1 man can not perform 3 hours work of the character which they contend belongs exclusively to a class 2 seniority position yet they are asking for the restoration of position of mail helper, a class 2 position, under which restoration the class 2 position would perform 2 hours work per day which under their present theory belongs exclusively to class 3 employees.

"Mr. Crites further states: 'and re-assigning this work to a Class 1 clerk' As stated above, a train crew caller is not a clerk. Therefore this statement is misleading.

"It will be noted that the train crew caller is devoting three hours during his assignment to 'working trains.' Such work involves the actual physical labor of handling mail and baggage from trucks to baggage cars, from cars to trucks, and loading and unloading trucks in the baggage room. This is strictly manual labor. It will be noted that that part of a mail helper's work which requires some knowledge of train service, station locations, etc., i. e., sorting mail is still being handled by mail helpers, this class of work having been divided among the three remaining mail helpers.

"Because of the vague statements made by the employees and their failure to refer to any rule in the clerical schedule or submit any data to support their position, we are making only this brief statement, and we reserve the right to reply to any and all statements which may be made by the employees in their ex parte submission and to reply in detail, with supporting evidence and argument, to any references which may be made to the rules or application of the rules in the current clerical schedule with respect to this particular matter."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, containing Rule Nos. 3 and 27, referred to.

OPINION OF BOARD: Effective September 5, 1938, Carrier abolished a position of mail helper, rate \$102.80 per month, at El Reno, Oklahoma and established a position of crew caller, rate \$109.20 per month. The crew caller was assigned to assist in the handling of mail and baggage for three hours daily and the balance of the work formerly performed by the mail helper was turned over to other mail helpers working at the El Reno station.

Petitioner contends that when Carrier discontinued the position of mail helper and assigned three hours of the work attaching to said position to an employee occupying a position in a higher class it violated Rules 3 and 27 of the agreement and joint interpretation of the latter rule.

Rule 3 relates to seniority and is not applicable unless other rules of the agreement have been violated. Rule 27 provides in part:

"Rule 27. Roster. A seniority roster showing name, occupation, location and seniority date of all employees in each seniority district will be posted in agreed upon places accessible to all employees affected:

"Following rosters will be established:

"Class 1 Seniority roster to include:

"Train and Engine Crew Callers.

"Class 2 Seniority roster to include other office and station employees, such as:

"Baggage Helpers and Parcel Room Employees.

"Class 3 Seniority roster to include:

"Oil House Attendants." (and others.)

The interpretation of Rule 27 dated June 20, 1933, relied upon the Petitioner, reads as follows:

"Rule 27. It is mutually agreed that the purpose and intent of the Clerks' contract is to segregate the various classes (see Classes 1, 2, and 3, Rule 27) of duties as far as conditions will permit, and that in case where the work of a given class on an abolished position is distributed to another position it will be assigned to other employees holding positions of the same class when such employees are available and qualified."

It will be noted that Rule 27 provides for a seniority roster showing name, etc., of all employees in each seniority district, and further provides that seniority rosters will also be maintained for employees in each class (1, 2 and 3) within each district. Rule 28 provides:

"Rule 28. Retention of Seniority. Employees promoted from one seniority class to another, as covered by Rule 27 of same seniority district, will retain and continue to accumulate seniority in the class from which promoted.

"Employees who have been promoted from seniority class two or three to seniority class one and disturbed from regular position in class one may return to class from which promoted and retain and continue to accumulate seniority in class one for a period of six months, with right to bid on bulletined positions. After six months, period employee must return to position in class one at first opportunity or forfeit all earned seniority in that class."

This Board has held in numerous awards that work could not be taken from employees in one seniority district and turned over to employees located in another seniority district. It has also held in numerous awards that Carrier could not abolish a position and turn the work of the position over to an employee occupying a lower rated position. See Award 236.

The claim in this case cannot be said to fall in either of the above stated catalogues. The employees involved are all in the same seniority district. The work of the abolished position that was not turned over to other employees of the same class was turned over to an employee of a higher rated and paid class in the same seniority district. The question therefore presented is whether work normally performed by employees of a class may be performed by employees of a higher class in the same seniority district.

There would be considerable force to Petitioner's contention if Rule 27 stood alone, but this rule must be considered in the light of the interpretation

of said rule agreed to between the parties and for this reason we express no opinion as to the meaning of the rule separate and apart from said interpretation.

The interpretation of Rule 27 states that the purpose and intent of the Clerk's contract is to segregate the various classes of duties **as far as conditions will permit**. This relaxed any rigid rule of classification if one theretofore existed. In the interpretation the parties further agreed that where the work of a given class on an **abolished position** is distributed to another position it will be assigned to other employees **holding positions** of the same class when such employees are available and qualified. The record shows that all the work of the abolished position, except three hour's work turned over to the crew caller, was turned over to other employees holding positions of the same class. Petitioner does not contend that all the work of the abolished position should have been turned over to these employees. The claim is that the abolished position should be restored to handle this three hours' work.

The fact that the parties mutually agreed to an interpretation of Rule 27 is indicative of ambiguity as to the intent and purpose of the rule. It is the Opinion of the Board that under the rule and the joint interpretation thereof the action taken by Carrier in this case is permissible.

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 27th day of September, 1939.