

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

PORT UTILITIES COMMISSION, CHARLESTON, S. C.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the agreement between it and the Brotherhood when on or about March 15th, 1939, it abolished the position of Storekeeper, rate \$99.75 per month and removed a substantial majority of the duties of said position out from the scope and operations of said agreement. Also claim that said position of Storekeeper shall be re-established and employees affected by the violation of said agreement be reimbursed for wage losses retroactive to March 15, 1939."

EMPLOYEES' STATEMENT OF FACTS: "There is in effect between the two parties to this dispute a general wage and working agreement, effective as of June 1, 1938, covering the wages and working conditions of the class of clerical, office station and store employees, including the position and incumbent of position of storekeeper located at Charleston, S. C.

"Prior to March 15, 1939, the Carrier maintained a position known and designated as storekeeper with an established and agreed upon rate of \$99.75 per month. Said position was subject to all of the rules of the aforementioned agreement between the two parties.

"The duties of said position consisted of (1) full charge and responsibility for the maintaining of necessary materials and supplies required in the operation and maintenance of machine shops, road way, wharves, buildings and other facilities of the carrier; (2) issuing of such supplies and materials to the various departments of the carrier, (3) rendition of necessary records and accounts as required by the management in connection with said materials and supplies, (4) rendition of records recording coal and water issued to locomotives, and (5) checking and rendering time sheets or time reports for employees engaged in machine shop work.

"Under date of February 13, 1939, General Manager, J. D. Rooney, addressed the following letter to Mr. Paul A. Nadol, the regularly assigned incumbent of position of storekeeper:

'Losses which the Port Utilities Commission sustained during the year 1938, with no immediate prospects of improvement in business conditions makes necessary a reduction in expenses at this time.

'Under the plan of reorganization the position which you now occupy will be abolished as of March 15th, 1939.

"It is, therefore, our contention that the carrier should be required to restore the duties which provided the substance of said position of storekeeper to the scope and operations of our agreement and reestablish the position of storekeeper as well as reimburse all employees adversely affected by such actions for wage losses suffered."

POSITION OF CARRIER: "The Port Utilities Commission of Charleston, South Carolina, during the year 1938 sustained a loss of \$118,432.00, (Page 17), an appreciable sum for a small switching line to lose.

"The Commission in meeting of February 8th, 1939, by appropriate resolution directed the management—

'To take action with a purpose of reduction through the personnel to effect a saving of approximately eighteen to twenty thousand dollars annually, and to bring about all other savings that can possibly be arranged in general operations'—(Page 18).

"The management appreciated the seriousness of the situation and promptly set about to carry out the instructions of the Commission, and on February 13th, 1939, notified employees affected by letter. Such communication was addressed to Mr. Paul A. Nadol, Storekeeper, (Page 20).

"The Port Utilities Commission because of the limited scope of its operations and the class of service it performs requires but relatively small storestock to care for its needs. Responsibility for supplies and their distribution rests with the Engineering Officer of the Commission.

"Storehouse in which supplies are kept is closely adjacent to the Machine Shop. Approximately ninety percent of these supplies are used in the Machine Shop. With the abolishment of the Storekeeper's position February 28th, 1939, such supplies as remained on hand were turned over to the department in which they are used, and such clerical work that was formerly cared for by the storekeeper was taken over by the Auditing Department, and placed under direct supervision of the Chief Clerk of this Department, who is a Member of the Brotherhood of Railway and Steamship Clerks.

"We respectfully submit that in accomplishing necessary re-adjustments that thoughtful consideration was given the rights of our employees under existing agreement, and we believe that in abolishing the Storekeeper's position we have not violated the rules of the agreement between the Port Utilities Commission and the Brotherhood of Railway and Steamship Clerks, and therefore, pray that your Honorable Body on statements as presented will find no violation of agreement, and therefore, no grounds for the issuance of an order reestablishing the position of Storekeeper and re-imbursement of alleged wage losses."

There is in evidence an agreement between the parties bearing effective date of June 1, 1938.

OPINION OF BOARD: It has been repeatedly held by this Board that work embraced within the scope of an agreement may not properly be removed from such agreement and assigned to employees not subject to its terms. In the instant proceeding the operative Agreement expressly specifies, in addition, that "positions or work within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except in the manner provided in Rule 60" (that is, through negotiation after due notice).

The position of storekeeper as such here involved was abolished; but the work of that position was transferred, partly to clerical employees subject to the Agreement, and partly to mechanical employees outside the scope of the Agreement. To the extent that work was thus removed from the application of the governing rules, there was obviously a violation of the Agreement.

It does not follow, however, that the position of storekeeper must necessarily be restored, at the previously prevailing monthly rate, or that full employment at that rate must necessarily constitute the measure of wage losses for which the employes affected are entitled to reimbursement retroactive to March 15, 1939. The carrier is free to abolish old positions and to establish new ones, provided it does not thereby remove positions or work from the scope of the Agreement, and the violation here involved can be entirely eliminated through the restoration to employes subject to the Agreement of such work as was removed from its scope upon abolition of the position of storekeeper. It is not the function of this Board to determine what new position shall be established, nor is it able, on the basis of the record as submitted, to determine the amount of reparation to which the claimants are entitled.

In this situation, the same conclusions are justified as were reached in Award 385 of this Division, upon which, among others, the representatives of the employes have relied. To paraphrase these conclusions: The essence of the violation has consisted in the performance of storekeeper's work by employes not embraced within the scope of the Agreement, and the violation can be removed by restoring the work thus performed to employes falling within the scope of the Agreement. Under these circumstances the equities of the situation will be fully met if the parties determine through negotiation the actual extent of the violation, the just measure of loss resulting therefrom for which compensation should be made, and the character of the arrangement whereby the work of storekeeper can be restored to employes covered by the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 evidence of record discloses a violation of the Agreement as of March 15, 1939.

AWARD

Claim sustained to the extent that it is herein found that the work of storekeeper is being performed by employes not embraced within the scope of the Agreement. The parties are directed to determine through negotiation the actual extent of the violation, the just measure of loss resulting therefrom for which compensation should be made, and the character of the arrangement whereby the work of storekeeper can be restored to employes covered by the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.