

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railway:

"1. In behalf of J. N. Morgan, Baggage-man, Amarillo, Texas, rate \$110.95 per month, seniority date, Class No. 1 district, August 30th, 1920, for pay, on call basis, effective November 16th, 1939, and all subsequent dates when other employes have been used to perform the work of Baggage-man in connection with train Nos. 51 and 112 at Amarillo passenger depot.

"2. In behalf of H. P. Thompson, Stevedore, Amarillo, Texas, freight house, rate 53 cents per hour, seniority date in Class No. 3 seniority district, December 16th, 1936, for reimbursement for all monetary loss sustained retroactive to December 4th, 1939, date he was removed from his regularly assigned position of Stevedore at Amarillo freight house and the work assigned to Mr. R. M. Francis, an employe in Class No. 1 seniority district.

"3. In behalf of L. R. Brown, Class No. 1 seniority date, January 11th, 1939, for reimbursement for all monetary loss sustained account being displaced from position of Station Helper, rate \$70.20 per month, at Erick, Okla. effective close of work day December 15th, 1939, by Mr. H. P. Thompson, the Stevedore who had been removed from his Class No. 3 position at Amarillo freight house.

"4. In behalf of W. B. Snider, F. Bieganski, et al, for reimbursement for all monetary loss sustained account position of Stevedore, Class No. 3 seniority district and on Class No. 3 seniority roster, being transferred to Class No. 1 seniority district effective November 15th, 1939."

EMPLOYEES' STATEMENT OF FACTS: "The following letter, signed by A. Petersen, Agent, Amarillo, Texas, and addressed to Mr. J. N. Morgan, Baggage-man, rate \$110.95 per month, Class No. 1 seniority date, August 30th, 1920, joint with Mr. H. P. Thompson, regularly assigned Stevedore, rate 53 cents per hour, Amarillo freight house, with a Class No. 3 seniority date of December 16th, 1936, was dated Amarillo, Texas, November 14th, 1939:

a matter of fact, the Division Chairman is employed in the Superintendent's office and a conference could have been arranged on 5 minutes' notice. Mr. Thompson who held position of stevedore was permitted to remain on the new position of station baggageman until after position had been bulletined and filled and Mr. Thompson last worked on the position at Amarillo, December 2nd. Mr. Thompson, therefore, was not really affected for a period of 19 days after notice was given of the change. The employees asked for no conference during this time.

"There is no warrant for the charge made by the employees that the position of stevedore was not properly discontinued.

"There is no question of adjustment in rate of pay involved in this case and it was not necessary to confer with the Committee as to making adjustment in rates of any employees for any of the positions referred to.

"As we have previously said the claim of L. R. Brown, station helper at Erick, W. B. Snider and F. Bieganowski and other employees, are not being discussed because their claims are predicated wholly on the claim of former stevedore Thompson and the claim for these employees will naturally follow any decision made in Mr. Thompson's case.

"In conclusion we have clearly shown as to the principles involved in the numerous claims that first, there is no limitation placed upon the carrier in the clerks' contract with respect to assigning work which is being performed by one class 1 employe on a call to another class 1 employe who holds a regularly assigned position. Second, there has been no violation of Rule 27, the interpretation thereto or the very plain award of your Board in Docket CL-959 previously referred to in assigning work formerly handled by a Class 3 man to a Class 1 man, when no other class three men were employed at the station. To the contrary, that rule as interpreted by the parties to the contract and by your Board, was fully complied with. Third, the position of stevedore at Amarillo was not improperly discontinued."

OPINION OF BOARD: The agreement here involved is the same agreement as that in Award 956, and carries the same interpretation of Rule 27.

The facts, most favorable to the Carrier, disclose that Baggageman Morgan at Amarillo, Texas, assigned hours 3:00 P. M. to 11:00 P. M., was required to handle the baggage and mail each morning for trains 51 and 112, and for this service was paid on the basis of a call or a minimum of three hours. The Carrier on November 15, 1939, created the new position of second baggageman and assigned to this position the work of trains 51 and 112, and in addition assigned to this position part of the stevedore work of a full-time stevedore position which was abolished concurrently with the establishment of baggageman No. 2; also one hour of the work of this abolished stevedore position was assigned to baggageman No. 1. Baggage men are carried on the class 1 seniority roster and stevedores on the class 3 seniority roster.

Award 956 is not controlling. The facts as disclosed in that award show that all the work of the abolished position, except three hours' work turned over to the crew caller, was turned over to other employees of the same class, and it was held this action was within the meaning of the interpretation of Rule 27. But the situation disclosed by the facts now before us is entirely different. Here the entire work of this full-time stevedore, class 3, position was assigned to baggagemen, class 1, positions. To hold that this action was within the meaning of the interpretation of Rule 27 would be to hold that the interpretation constituted a nullification of this Rule. Obviously, it was not so intended. To use the language of the interpretation of Rule 27, "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." While the use of the phrase "as far as conditions will permit" relaxed any rigid rule of classification, it did not and was not intended to defeat the very purpose for which the classifications were made. We are convinced that the action of the Carrier was a violation of the intent and purpose of the Rule and the interpretation thereof.

This brings us to the various claims.

In claim (1) Baggage man Morgan is claiming pay on a call basis for the work in connection with trains 51 and 112. This claim must be denied. There was no violation of the agreement in establishing baggage man position No. 2. The violation consisted in assigning the stevedore work to baggage men.

In claim (2) Thompson claims reimbursement for loss because of being deprived of stevedore work at Amarillo when this work was improperly assigned to baggage men. This claim should be allowed.

In claim (3) Brown claims reimbursement for loss sustained on being displaced by Thompson. It appears that Thompson would not have displaced Brown except for the unwarranted act of the Carrier in depriving Thompson of the stevedore work. This claim, therefore, should be allowed.

In claim (4) reimbursement is claimed for the same work for which we have allowed reimbursement to Thompson. This claim should be denied.

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 in abolishing the stevedore, class 3, position and assigning the work to baggage men, class 1, positions, violated the intent and purpose of Rule 27 and the interpretation thereof.

AWARD

Claims (2) and (3) sustained; claims (1) and (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1940.