

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: "(a) Claim of the System Committee of the Brotherhood that J. R. Christian, Trucker, was cut off by the Management in violation of the rules of Clerical Agreement No. 6 between April 17 and May 24, 1939; and,

(b) That Trucker Christian be compensated for time lost in accordance with the schedule rate for his position."

EMPLOYES' STATEMENT OF FACTS: "Prior to April 17, 1939, the force working at the Hinton, West Virginia, Freight Station consisted of the following:

A. Meadows, Cashier	Rate	\$5.08 per day
A. L. Wiseman, Check Clerk	"	4.80 " "
E. L. Patton, Bill Clerk	"	4.80 " "
J. R. Christian, Trucker	"	.46 " hour

"Effective April 17, 1939, J. R. Christian was notified that he was cut off. For the first ten days that Christian was cut off, Bennie Anderson, Porter at the Hinton Passenger Station, was sent to the Freight House each morning to perform a portion of the duties previously performed by Trucker Christian. Bill Clerk Patton was instructed to perform the remainder of Christian's duties not performed by Anderson, and when Anderson was relieved after the duration of ten days from having to go to the Freight House, all of Christian's duties were assigned to the clerks.

"Effective May 24, 1939, Trucker Christian was called back by the Superintendent and placed on his former position, the clerical employees assuming their former status, the force thereafter being the same as that set out in the beginning of this Statement of Fact.

"There is in evidence an Agreement between the parties bearing effective date of November 16, 1936, and the following rules thereof read:

'RULE 1—SCOPE

'(a) These rules shall govern the hours of service and working conditions of the following groups of employees subject to the exceptions noted in Section (b) of this rule:

'GROUP 1—CLERICAL WORKERS: Employees who regularly devote not less than four hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, tran-

- "3. The position of the Carrier is fully supported by the rules of the agreement, the practice under the rules for a period of over twenty (20) years, and by decisions of the United States Railroad Labor Board and of The Third Division National Railroad Adjustment Board, as outlined herein.
- "4. In no event could there be a claim for the employe in this case, for, as set out in the Carrier's Statement of Facts, he secured a leave of absence when cut off, in lieu of exercising displacement rights as provided in the rule.

"The claim should be denied."

OPINION OF BOARD: While the facts are not agreed to there is no serious conflict. Prior to April 17, 1939, J. R. Christian was employed as a trucker, Group 3 employe under the Agreement, at Hinton, West Virginia. Effective April 17, the position of trucker was discontinued and it is claimed by the employes that the duties thereof were turned over and assigned to Group 1 employes until May 24, 1939, except that for the first 10 days of this period a Group 3 employe at the passenger station went to the freight house each morning to build the fire and sweep the office. After April 27, the work of building fires and sweeping the office was performed by a Group 1 employe so that effective April 27 all of the duties normally performed by Christian were performed by Group 1 employes. On May 24, the position was re-established and J. R. Christian was assigned thereto. The period of the claim runs from April 17 to May 24, 1939.

It is the contention of the carrier that Hinton is located in the soft coal fields of West Virginia, and that due to strike in the coal mines near this station there was a marked decrease in the station work at Hinton; that on this account the carrier, being without knowledge of the duration of the shutdown in the mines, was confronted with the necessity of reducing its expenses. The record does not sustain this contention for it shows that there was no material decrease in business at the freight station at Hinton during the time that trucker Christian was laid off. The work that Christian performed remained to be done and it was performed by other employes. In other words, the position was not abolished for the work still remained to be done. In Award 231 this Division said:

"Wherever a particular position is negotiated into an Agreement and specifically placed there by the parties, it means only one thing, and that is that so long as the work is to be done, it will be done by an employe filling that position under the Agreement at the rate of pay fixed in the Agreement. The position can be abolished if the work is not there but it cannot be handed over to an employe not covered by the Agreement."

This Division was confronted with almost the identical question that we must answer in this case in Award 1306. A comparison of the rules involved in the Rock Island case and the rules in the current Agreement with the C. & O. shows that they are not distinguishable except in the former there was an interpretation agreed to by the parties. We quote from Award 1306:

"* * *. 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."

Christian's full time work remained. There was no abolishment of the job. The work he performed 6 to 8 hours a day was assigned to other employes. All that really occurred was that Christian was denied the right to perform his work.

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 employe involved in this dispute are respectively carrier and employe 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 the current Agreement.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of June, 1941.

Dissent to Award No. 1459, Docket No. CL-1451

This Award errs by its reliance upon preceding awards in cases which involve agreements effective on other properties containing provisions not found in the agreements between the parties to this dispute. The provisions of the Agreement between the parties here impose no limitations upon the right of the carrier to abolish a position as the conditions may require, any more than it does so in respect to the creation of a position. Incident to an abolishment there may be dispositions of the work which might be shown to conform or not to conform to the provisions of the Agreement as they are found applicable to the circumstances of the particular case presented.

In this case, however, the application of the provisions of the Agreement are found by this Award to rest upon an agreed-to interpretation made by other parties representing interests on another property evidently agreeable to them and applicable to the conditions prevailing upon that property. To rest upon such an agreed-to interpretation by other parties to give meaning and intention not here found in this Agreement in respect to abolishment of positions is to extend this Agreement to the point that it had been extended by the interpretative agreement of those other parties, and is not to give proper interpretation and application of the Agreement to the circumstances presented by this single case on this separate and distinct property.

/S/ C. P. DUGAN
/S/ R. F. RAY
/S/ A. H. JONES
/S/ R. H. ALLISON
/S/ C. C. COOK