

**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  
NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood in behalf of Mr. F. A. Lehman that the position which he occupied on October 14, 1939, should be classified and paid as working foreman, effective October 4, 1939, and should be bulletined to employes of the Tacoma Division, based on Rules 11, 76 and 78 of the Clerks' Schedule."

**EMPLOYEES' STATEMENT OF FACTS:** "On October 14, 1939, Mr. F. A. Lehman was employed as a laborer in the lumber department of the Northern Pacific Storeroom at South Tacoma, Washington. He is required to assist in the unloading of material, and in so doing is the leader of a gang of four men, and checks the material (chiefly lumber) against invoices and makes sure that it is properly placed in the lumber yard. These duties require that he be able to grade and tally lumber in addition to being able to verify the count. Claim was filed on October 14, 1939, that this position be classified and rated as working foreman, effective October 4, 1939, and bulletined to employes of the Tacoma Division."

**CARRIER'S STATEMENT OF FACTS:** "The lumber department of the Store Department at South Tacoma is in charge of a lumber yard foreman. This lumber yard foreman and three sub-foremen classified as lumbermen direct and supervise the work performed in the lumber yard. A variable number of laborers, depending upon service requirements, perform service in the lumber yard."

"Mr. Lehman who is presenting this claim is employed as a laborer in the lumber yard of the South Tacoma Store Department. The work performed by Mr. Lehman is under the direction and supervision of the lumber yard foreman or sub-foremen who are designated as lumbermen. The duties and responsibilities of his position are similar to those of other laborers in the lumber yard. This is the same set up as is in effect at other large stores on this Railway."

**POSITION OF EMPLOYEES:** "Employes contend that the position occupied by Mr. Lehman on October 14, 1939, was and is that of working foreman. The lumber yard force consists of about thirty laborers under the direction and supervision of three lumbermen. Mr. Lehman is placed in charge of a gang of four men, including himself, and takes charge of the unloading and piling of lumber. He is required to count and sort the lumber as unloaded and to see that it is piled in its proper place in the lumber yard. This is work and responsibility which should properly be assigned to a working foreman at 61 cents per hour and not to a laborer at 48 cents per hour."

has shown that this is not in accordance with the facts, but that these duties are those of a sub-foreman designated as a lumberman, and are performed by him. The sub-foreman designated as lumberman is in direct charge of the small gang of men who perform service in the lumber yard. Lumbermen are paid a rate of 60 cents per hour which is the going rate for these positions on this Railway. The Employees in this case are asking that Mr. Lehman's position be reclassified as that of a working foreman. A working foreman is paid a rate of 61 cents per hour. The Employees are, therefore, asking that Mr. Lehman be paid a rate higher than that which is paid to the sub-foremen who have direct supervision in the lumber yard. The claim itself therefore shows its own fallacy. The Employees are not contending that Mr. Lehman's position should be reclassified to that of a lumberman for the very simple reason that they know there would be no basis for such a contention. Knowing this as they do, they attempt to reclassify the position as that of a working foreman which receives a rate in excess of that of a lumberman. There being no basis for a claim that the position should be reclassified as that of a lumberman, it requires no argument to convince this Division that there can be no possible basis for a contention that the position should be reclassified as a working foreman.

"The facts in this case plainly show that there is no foundation for the Employees' claim. The rules cited by the Employees in this case corroborate the Carrier's position that there is no merit to this claim."

**OPINION OF BOARD:** When this case was argued before the Third Division in November 1940, the facts involved and the contentions of the respective parties were in such conflict that the Board requested them to make a joint check of the duties performed and the time consumed on each such duty at the time claim was filed and on date of joint check, and to undertake to agree as to what constitutes the duties of working foreman and laborer. The joint check, bearing date of January 22, 1941, was subsequently filed with the Board, the material part of which reads as follows:

"Mr. Lehman has been employed off and on at the lumber yard for twelve years, as a lumber yard laborer. His last continuous service has been since 1934. There have been no changes in the work performed by this position subsequent to the date of this claim.

"Mr. Lehman assists in unloading of material, working with a gang of four men. He does not check material unloaded against invoices, but against a pencil memorandum furnished by the lumberman. The checking of material consists simply of counting the number of pieces of lumber unloaded from cars of mixed lumber, or total number of pieces in cars of same size.

"Materials unloaded onto push cars, different sizes of lumber being placed on different cars. It is then moved to the lumber pile where it is stacked in conformity with size of material.

"Mr. Lehman does not grade lumber.

"Generally speaking, two men work inside the car together passing out the lumber to two men outside the car who place the lumber being unloaded on push cars as above described.

"When material is loaded, the reverse procedure is followed; that is, the number of pieces of various sized lumber are counted by Mr. Lehman and placed in the car.

"Mr. Lehman stated that he had no authority to issue instructions or delegate duties to the men in the crew; that this is done by the lumberman or the lumber yard foreman; and that the work performed by the crew in which Mr. Lehman works is supervised by either the lumberman or lumber yard foreman."

It was originally claimed by the System Committee of the Brotherhood on behalf of Mr. F. A. Lehman that the position which he occupied on October 14, 1939 should be classified and paid as a working foreman. In the oral argument before the Referee the employees asked that Lehman's position be not classified as a working foreman but that it be classified as a store helper.

The question that confronts us is whether or not F. A. Lehman at the time the claim was filed was performing the duties of a laborer in the lumber yard of the Northern Pacific Railway Company or whether he was performing the duties of a store helper. In compliance with the request of the parties to define the duties of working foreman and laborer there was filed on January 22, 1941 a joint statement of the parties. We quote from same:

"At South Tacoma, a store laborer, generally speaking, works outside the store room proper. Store laborers who are employed in and around the store room proper are usually used to unload, unpack, store, pack and load material that is handled through the store room, and to assist the section stockman, store helper or working foreman as directed.

"The laborers who are employed outside the store room proper, namely; in the lumber yard and reclamation plant, work under the direction of a lumberman or foreman. The title of 'lumberman' is synonymous with the title 'foreman.' These laborers handle material outside the store room proper to the same extent as do laborers who are employed in and around the store room proper.

"A store helper is employed in and around the store room proper. His duties consist of handling material that is received and disbursed. When material has been received, the store room employees, including section stockmen, working foremen, helpers and laborers unpack and store the material in places provided therefor. When material is disbursed, the principal duty of the helper is to take requisitioned material from the shelves, bins or other places of storage and prepare it for shipment, and place necessary information on the requisition. The helper works with the section stockman in keeping up required stock, in compilation of stock records and in any other work that may be directed by the section stockman. The helper is in effect an assistant section stockman in training for section stockman position."

The employees in order to sustain their contention must show that the position held by F. A. Lehman is improperly classified.

The joint check shows that Lehman had no authority to issue instructions or delegate duties to men in the group; that the crew in which he works is supervised by lumbermen or lumber yard foremen; that he does not grade lumber; that he assists in unloading materials working with a gang of 4 men; that the checking of materials consists merely in counting the number of pieces of lumber unloaded from cars of mixed lumber or total number of pieces in cars of the same size.

A fair reading of the joint check convinces this Board that Lehman is performing the duties of a laborer at South Tacoma Yard and this claim must, of necessity, 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 employee involved in this dispute are respectively carrier and employee 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 there was no violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 18th day of July, 1941.