

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 System Committee of the Brotherhood in behalf of Mr. William Campbell that the position occupied by Mr. Campbell on October 14, 1939, designated as store laborer, should be classified as store helper, rated at 59 cents per hour, effective October 4, 1939, and bulletined to employees in accordance with Rule 11, Clerks' Agreement, based on Rules 11, 76 and 78 of the Clerks' Schedule."

EMPLOYEES' STATEMENT OF FACTS: "Mr. William Campbell is employed as a laborer in the Northern Pacific lumber yard at South Tacoma, Washington, and is paid 48 cents per hour. Mr. Campbell's duties consist of going to various points in the store, picking up finished lumber such as moulding, flooring, caboose sash, drop siding, dust guards, etc., bundling it and tagging it for shipments. Similar work in the main store is performed by store helpers who are paid 59 cents per hour. Claim for correction in rate was filed on October 14, 1939."

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. Campbell was employed as a laborer in the lumber yard at South Tacoma and worked under the direction and supervision of the lumber yard foreman and sub-foremen designated as lumbermen. By reason of his familiarity with lumber, he is used occasionally to pick up minor items of finished lumber for shipment. The lumber men handle all details required for loading and billing. When not performing these special duties, Mr. Campbell works with the rest of the crew as a laborer."

POSITION OF EMPLOYEES: "Employees contend that the position occupied by Mr. Campbell should be classified and paid as store helper. Rules 76 and 78 apply to this case and are quoted below for your ready reference."

'Preservation of Rates—Rule 76. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such position; employees temporarily assigned to lower rated positions shall not have their rates reduced.

such a contention. There were no changes in the duties and responsibilities of Mr. Campbell when working as a laborer on or about October 14, 1939, that would at that time warrant changing the classification of his position. The facts in this case and schedule rules cited by the Employees to sustain the claim show beyond any question that there is no foundation for the 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 both at the time claim was filed with the carrier and as of the date of the joint check. The joint check, bearing date of January 22, 1941, was subsequently filed with the Board, the material part of which reads as follows:

"Mr. Campbell who occupied position at time claim arose, is no longer on the position, having been succeeded by another employee.

"Mr. Campbell stated that about 25 per cent of his time was devoted to picking up various items of lumber, bundling it and tagging it for shipment, and that the balance of his time was devoted to working with other laborers in the lumber yard.

"Mr. Delmore, who succeeded Mr. Campbell, stated that he had worked in the lumber yard about five months in 1937, and has been in continuous service since April, 1939; that he worked about six months, prior to taking the present job, as a laborer in the lumber yard, not including the five months which he spent in this work in 1937.

"Mr. Delmore stated that about one-third of his time was devoted to the duties of picking up various items of lumber, bundling it and tagging it for shipment; that the balance of his time was devoted to working with other laborers in the lumber yard.

"Mr. Delmore stated that he reports to Mr. Campbell, who is now a lumberman, and works under Mr. Campbell's direct supervision. Mr. Campbell formerly performed the duties which are involved in this case. Mr. Delmore stated that it was only on rare occasions that he directed or supervised the work of other men.

"Mr. Dawson, lumber yard foreman, who has been in service since 1922, stated that laborers have performed this same kind of work during this period of time; but that the most likely man is selected for this particular work of picking up different items of lumber for shipment.

"Mr. Dawson stated that in selecting men for this particular work, the best qualified men were selected; and in his opinion only a limited number of men would be capable of performing this particular duty.

"Mr. Campbell stated there is no classification of helpers in the lumber yard; that the force in the lumber yard consists of a lumber yard foreman, lumbermen and laborers.

"There are employed in the South Tacoma lumber yard, a lumber yard foreman, three lumbermen and a kiln operator, who supervise the work of thirty-one laborers."

The question which confronts us is whether or not the position occupied by Mr. William Campbell on October 14, 1939, designated as a store laborer, should be classified as a store helper. The carrier concedes in its argument that, on account of Campbell's experience and familiarity with the materials, he was used occasionally to perform the duties set forth in the employees' statement. The joint check shows that about 25 per cent of Campbell's time was devoted to picking up various items of lumber, bundling it, and tagging it for shipment; that at the time of the joint check the then occupant of the

position in question, a Mr. Delmore, was devoting about one-third of his time to the picking up of various items of lumber, bundling it, and tagging it for shipment. On rare occasions he directs and supervises the work of other men.

Petitioner states and the carrier does not refute that, not only does the employe on the position in question collect, bundle and tag these small consignments of finished lumber, but that such consignments are checked against invoices and memoranda by him.

The joint check shows that the lumber yard foreman stated that in his position only a limited number of men would be capable of performing this particular duty. A fair reading of this particular record convinces this Board that the position in controversy as of the time claim was filed was in fact that of a store helper and it should be so classified, rated, and treated under the provisions of the current agreement.

Carrier's argument to the effect that the position, having been classified as a laborer for a number of years, should continue to be so classified is not sound. The continuing violation of existing rules does not change or diminish the binding effect of such rules. See Award 561.

The petitioner is requesting only that the position should be classified, rated, and the current agreement clearly applied as of the time the violation was called to the attention of the carrier. Compensation for the violation prior to the institution of this claim is not sought. The claim of petitioner should be sustained.

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 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 carrier violated the current agreement as contended by petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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