

Award No. 1730
Docket No. CL-1809

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS'
ASSOCIATION, INC.

THE CHICAGO AND NORTH WESTERN RAILWAY
COMPANY

(Charles M. Thomson, Trustee)

STATEMENT OF CLAIM: Claim of the System Appeals Committee and request that:

1. The Carrier has violated and continues to violate the agreement by abolishing the position of Local Storekeeper at Proviso, Ill., in Locomotive Department on July 10, 1939, and assigned the supervisory duties connected therewith to other employes outside the scope of the agreement; and

2. That the carrier shall be required by appropriate award and order to restore said supervisory duties of the class to a local storekeeper position within the scope and operation of the effective agreement; and

3. That employes adversely affected by the carrier's arbitrary action shall be reimbursed for all wage losses sustained retroactive to July 10, 1939.

There is in evidence an agreement between the parties bearing effective date of August 1, 1936, January 1, 1939 and January 1, 1941.

EMPLOYES' STATEMENT OF FACTS: There is an effective agreement in existence between the parties, said agreement is dated and last amended January 1, 1941, and the claim herein presented arises out of and is based upon the provisions of the Scope Rule Number 1 (a), and the terminating clause Rule No. 19.

For the purpose of this particular dispute we hereby stipulate the exact wording of the Rules that it is contended applicable to the action of the carrier abolishing positions arbitrarily, and removing the work from the scope and operation of the agreement:

"SCOPE

1. These rules, amended effective January 1, 1941, will govern working conditions of the following classes of supervisory employes on the Chicago and North Western Railway:

(a) Store Department:

1. Local storekeepers.

2. Assistant storekeepers.

* * * * *

supervisors' agreement, such as, local storekeepers, as well as the continuance of such positions, must be determined on basis of the service requirements, and that there are no schedule rules or agreements that require the railway company to continue such position solely for the purpose of furnishing employment to men holding seniority under provisions of agreement between the railway company and the supervisors' association after the service requirements on which such positions were established have been eliminated or have been reduced to the point where the continuation of the position is no longer warranted. There are no schedule rules that preclude assignment of duties formerly handled by the incumbent of a discontinued position to classes of employees to whom such work is properly assignable under schedule rules, recognized practices and understandings. In this instance the assignment of clerical and other routine work, formerly performed by the local storekeeper, to employees of a class coming within scope of clerks' agreement, where such work properly belonged, and the handling of all the necessary supervision by the division storekeeper and assistant division storekeeper, is entirely proper and not in conflict with the provisions of any schedule rules or agreements. The fact that the local storekeeper had been previously permitted to perform service of a class coming within the scope of clerks' agreement would not justify a contention that such position must be maintained and incumbent allowed to continue to perform work of that class. Such action would be in violation of the provisions of clerks' agreement and involve a jurisdictional dispute between the clerks' and supervisors' organizations. Further, it is inconsistent to expect the re-establishment of position of local storekeeper at Proviso to handle supervisory duties all of which are, under present conditions, adequately handled by supervisory positions now established at that point.

The employees in notice of October 23, 1941 advising the Third Division, National Railroad Adjustment Board, of their intention to make ex parte submission to the Board on this case, state the Scope Rule 1 (a) and last paragraph of rule 19, supervisors' agreement, were violated when position of local storekeeper at Proviso Locomotive Department was abolished. Rule 1 (a) lists the class of positions in store department coming within the scope of supervisors' agreement. The concluding paragraph, supervisors' agreement, refers to changes in the provisions of the agreement. The provisions of rules 1 (a) and concluding paragraph, supervisors' agreement, are not involved in this case. The railway company concedes that positions of local storekeepers are of a class coming within the scope of supervisors' agreement, and at points such positions are maintained as a result of service requirements the incumbents are compensated under provisions of rules in that agreement. Further, the abolishment of position of local storekeeper at Proviso Locomotive Department did not involve amendment, revision or annulment of any rules in supervisors' agreement.

It is the position of the railway company that the discontinuance of position of local storekeeper at Proviso Locomotive Department in circumstances outlined above was not in violation of the provisions of any schedule rules or agreements with the supervisors' association, and that the claim as submitted to the Board in this case cannot properly be sustained.

OPINION OF BOARD: The facts in this case may be summarized as follows: The agreement of which there is a claimed violation was revised and became effective January 1, 1939 and January 1, 1941. On July 10, 1939 the Carrier discontinued the position of local storekeeper at Proviso locomotive department and the supervisory duties were turned over to a division storekeeper.

On September 1, 1939 the store department headquarters at South Pekin were consolidated with the store department at Proviso and a former division storekeeper at South Pekin was transferred to Proviso as assistant division storekeeper, a newly created position at that point.

It is agreed that neither the division storekeeper or the assistant storekeeper are covered by the agreement and that when the position of local

storekeeper was discontinued approximately 20 per cent of his duties were supervisory.

It is the position of the Employees that these duties were arbitrarily removed from the agreement and assigned to an employee without the agreement; that the position that was actually abolished was that of division storekeeper at South Pekin and not the position of local storekeeper at Proviso at which point all of the supervisory duties remained and were actually increased by increasing the force of employees from 8 to 13.

It is the position of the Carrier that the sub store for the Proviso locomotive department which was in charge of a local storekeeper is located in the same building which houses the headquarters of the division and assistant division storekeeper; that in reorganizing the personnel of the store's department in the Proviso territory it was found that the position of local storekeeper was devoting 80 per cent of his time to clerical work; that subsequently, due to closing down work in other departments at South Pekin, the store department headquarters at South Pekin were discontinued and consolidated with the store department at Proviso; that upon completion of the consolidation the division storekeeper was moved to Proviso and made assistant division storekeeper; that Rule 2 recognizes the right of the Carrier to abolish any position covered by the agreement the need for which no longer exists.

There is nothing in the record to show that the position of local storekeeper was not performing the identical duties when it was discontinued in July 1939 that it was performing when the agreement was amended January 1, 1939 and, in the absence of such a showing, it must be assumed that the duties were identical.

In Award 1729, Docket CL-1808 it was said:

"It is also a cardinal rule that the Board does not modify agreements. Its function is to interpret them. * * *"

and

"It is a basic principle that Carriers may not arbitrarily remove work from collective agreements and assign it to employees not covered thereby. * * *"

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 violated the applicable agreement as contended by the Petitioner.

AWARD

Claim (1, 2, and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of February, 1942.

Dissent to Award 1730, Docket CL-1809

The error of this award arises from failure to acknowledge the right of the Carrier to have supervisory and other employees, covered or not covered by agreements, assume the performance of work incident to their positions.

/s/ **C. P. Dugan**
/s/ **R. F. Ray**
/s/ **C. C. Cook**
/s/ **A. H. Jones**
/s/ **R. H. Allison**