

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**

READING COMPANY

STATEMENT OF CLAIM: 1. Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the existing agreement, when on December 19th, 1939, position of laborer was established and assigned at the rate of .48 per hour, in lieu of position of Storehelper at the rate of .56 per hour at St. Clair Enginehouse Storehouse, St. Clair, Pa., without conference or negotiations.

2. Carrier continues to violate agreement, when such classification is continued and employes thereby adversely affected, shall now be paid the difference between the prevailing rate of laborer, (.48 per hour) and that of Storehelper (.56 per hour) since the date of establishing position of laborer.

JOINT STATEMENT OF FACTS: Prior to June 1932 there were in effect and working at St. Clair Enginehouse Storehouse at rates established for such positions—

- 1 Storekeeper (Supervisory)
- 1 Clerk
- 6 Storehelpers

In June 1932, due to decrease in business brought about by the depression, the number of positions was reduced to—

- 1 Stockman
- 2 Storehelpers

Effective December 19, 1939 the position of Laborer was created at the rate of 48 cents per hour. The duties of the newly created position consists of the following:

- Removing material from bins under the supervision of the Stockman.
- Emptying oil from drums into storage tank.
- Unloading material from cars received for the local Storehouse.
- Loading material in cars for Reading Storehouse.
- Loading material and supplies for sections on the Shamokin Division served by St. Clair Storehouse.
- Cleaning bins and Storehouse.

In part 2 of "statement of claim" the Brotherhood claims the Carrier continues to violate the Agreement when classification of laborer is continued and employes adversely affected shall now be paid the difference between the laborer's rate of 48 cents per hour and a storehelper's rate of 56 cents per hour since the date the laborer's position was established, and it is their position that a position of storehelper, abolished in June, 1932, should be restored to which the Carrier does not subscribe.

The fact that positions classed as storehelpers existed prior to 1932 and were abolished in reduction of force in June, 1932, does not require that Carrier must restore such positions when forces are increased, unless the type or class of work to be performed on the new position is the same as that assigned to a storehelper.

In the instant case, when the total volume of work increased and assistance in the storehouse was necessary, it was decided, after careful consideration, to segregate the common labor work from the storehelper's and trucker's work and establish a laborer's position to perform same. It was not expected or required that the laborer perform the duties of the incumbents of higher rated positions.

Carrier holds that the laborer's position was established in accordance with the requirements and that no rules of the current agreement were violated, and, further, in view of the work performed, as shown in Exhibits "A"—"B" and "C"—"D," that the position established was properly that of a storehouse laborer; consequently there were no employes adversely affected and the claim for payment of the difference between laborer's rate and storehelper's rate from date the laborer's position was established is entirely without merit and not supported by any rules of the effective Agreement, and Carrier requests that the Board so find and deny the claim.

OPINION OF BOARD: Contentions in support of this claim will be discussed under Rules 16 and 18 of the agreement.

Rule 16 provides: "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rates of pay or evading the application of these rules." The agreed statement of facts discloses that the six storehelper positions were abolished in 1932, due to a decrease in business brought about by the depression. The laborer's position, about which this dispute centers was created in 1939. Conceding that the duties performed by this laborer's position were previously performed by storehelpers and stockman, there is nothing in Rule 16 which requires that these duties be now compensated at either storehelper or stockman rates. Rule 16 was obviously never intended to apply to a situation such as this, where positions were abolished because of a decrease in business brought about by the depression. When the six store helper positions were abolished in 1932 there was no attempt to evade the rules by assigning the duties to new lower rated positions, but the positions were in fact discontinued. The mere fact that the work now being performed by the laborer's position was formerly performed by storehelpers and stockman is not decisive. There is no rule against a higher rated position performing the work of a lower rated one. Even if the work now performed by this laborer was formerly apportioned among the storehelpers and stockman, there is nothing in the rules which prevents this carrier from establishing a new position of laborer and assigning this work to such position if the work assigned to this new position is actually that of a laborer. This is the very thing which is contemplated by Rule 18, which provides: "The rates for new positions shall be in conformity with the rates for positions of similar kind, or class in a seniority district were created. . . ." It should be noted that under this rule it is not necessary that the comparison be made with an identical position but only with "positions of similar kind or class." At the hearing on this docket it was requested that there be furnished to the Division a "joint check of the duties performed by the laborer in the Car Shop Storehouse at St. Clair for a stated period and a like statement of the work performed by the laborer in

this case for the same period; also a like check to be made against the work performed by the storehelper, or storehelpers, for the same period." This joint check was furnished and forms a part of the record in this case. The employes contend that this joint check was not accurate because it is alleged "some instructions had been issued" which prevented a representative check. However, there is a failure to establish by proof of any kind that any instructions had been issued as asserted. From this joint check but one conclusion can be reached, and that is, that new position of laborer established by the carrier carries a rate in conformity with a position of a similar kind in the same seniority district, the joint check showing that the laborer in the Car Shop Storehouse at St. Clair is a position of a similar kind or class.

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 record fails to disclose a violation of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.