

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

(1) When effective at close of business, 5:00 P. M., October 15th, 1941, per District Storekeeper's Bulletin No. 66 dated August 13th, 1941, it abolished, in addition to six (6) other similar positions, the position of Inventory Clerk occupied by Clerk M. R. Doyle and failed and refused and continues to refuse to permit Clerk Doyle whose seniority date on the Clerks' Supply Department system seniority district and roster, Group 1, is September 11th, 1921, to exercise his seniority and displacement rights on the position of Commissary Storekeeper at Little Rock, Ark. held by T. C. Clingan whose seniority in Group 1 on the same seniority district and roster is August 1, 1932. Copy of seniority roster, Supply Department—system, is attached hereto, made a part hereof and designated as Exhibit "1-A."

(2) That the Carrier shall reimburse Clerk M. R. Doyle for wage loss suffered in the amount of difference in \$5.51 (\$4.79 plus 72¢ equals \$5.51 as of 9-1-41, date Mediation Wage Agreement applied to clerical positions) per day and one thirty-first of \$170.90, i. e. \$5.545 (\$150.00 per month plus \$21.90 equals \$171.90 as of 9-1-41, date Mediation Agreement applied to clerical positions) for each day, Monday through Saturday and one day at the pro rata rate of \$171.90 or \$5.545 for each Sunday and holiday, October 16th, 1941 to November 30th, 1941, both dates inclusive, and the amount of difference of \$5.59 per day, that is, \$5.51 plus eight cents (8¢) per day equals \$5.59 per day, and \$174.35 per month (\$150.00 per month plus \$24.35 per month effective 12-1-41 as applied per Mediation Wage Agreement) for each week day, Monday through Saturday effective December 1, 1941 and thereafter and one day at the pro rata monthly rate of \$174.35 or \$5.6242 for each Sunday and holiday effective December 1, 1941 and thereafter until the dispute is disposed of and the claim satisfied.

NOTE: Clerical position of Inventory Clerk at North Little Rock upon which Mr. Doyle placed himself under protest on October 16, 1941 is a daily rated six (6) day per week assigned position while the position of Commissary Storekeeper at Little Rock, Ark. is a monthly rated seven (7) day per week assigned position.

EMPLOYEES' STATEMENT OF FACTS: On October 2nd, 1941 per Store Accountant C. Williams' Bulletin No. 41, copy designated as Exhibit "A,"

2. That Mr. Clingan is not subject to displacement by employees in the exercise of their seniority rights.
3. That the position to which Mr. Clingan is assigned—commissary storekeeper—becomes available to other employees in the Supply Department only when a vacancy exists.

The Management appeals to your Honorable Board to render its award sustaining the contentions of the Management in this case based on the facts herein presented.

OPINION OF BOARD: The facts in this claim are not in dispute. Very briefly, they are as follows: On October 7, 1941, the Claimant, M. R. Doyle, was assigned to a temporary position of Inventory Clerk (a position of less than thirty days' duration) under a bulletin dated October 2nd. However, he started to work on this position October 1st. The work was completed October 15th, and he returned to his former position under protest, contending that his seniority rights were superior to the person who held the position of commissary store at Little Rock. Rules 12, 19, 25, and 29 are involved in this claim.

Rule 12 reads: "Positions or vacancies of less than thirty (30) days' duration shall be considered temporary and may be filled without bulletining."

The position of Inventory Clerk was a temporary job of less than thirty days' duration and did not have to be bulletined, but the petitioner contends that because the Carrier bulletined the position, Doyle was entitled to displacement rights.

This Board understands the Carrier admits that if the position of Inventory Clerk should have been bulletined under the rules, he would have displacement rights.

On the other hand, there is no doubt had Doyle been placed on this temporary position by the Carrier, without its being bulletined, he would not have acquired any displacement rights when the work was discontinued fifteen days later.

Since the bulletin was issued without any rule to support it, the Board is of the opinion that Doyle acquired no rights under the bulletin. Such a bulletin would have no more force and effect than one which abolished a position contrary to the rules of the agreement.

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

The record does not disclose a violation of the 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 January, 1943.