

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

**DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: (1) Request of the System Board of Adjustment that the position of Warehouse Foreman, Denver Freight Station, be bulletined and filled in accordance with schedule rules, and

(2) That the senior qualified employe entitled to the position of Warehouse Foreman, Denver, Freight Station, be reimbursed for all loss sustained, account refusal of the Carrier to bulletin position in accordance with schedule rules.

EMPLOYES' STATEMENT OF FACTS: On or about November 15, 1941, position of Warehouse Foreman, Denver Freight station, became vacant account retirement of Mr. C. E. Lonskey, Foreman.

The carrier appointed Mr. W. H. McCanna to this position without bulletining same. Employes requested that the position be bulletined, request being refused by the Carrier.

On handling up to court of last resort, and the Carrier still refusing to bulletin the position of Warehouse Foreman, Denver Freight Station, the employes requested the Carrier to join with them in submission of this dispute. The Carrier refused; therefore, this claim is being presented ex parte.

POSITION OF EMPLOYES: The employes contend the Carrier's contention that the position of Warehouse Foreman, Denver Freight Station, does not come within the provisions of the Clerks' Agreement is fallacious and cannot be supported.

Rule 1 (Scope Rule) of the Agreement, effective prior to June 1, 1941, reads in part as follows:

"Rule 1. These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

"(1-a) Clerks.

"(1-b) Ticket Sellers.

Weighmasters.

Car Sealers and Carders.

Warehouse, Transfer and Store Foremen, except Foremen who supervise Assistant Foremen or Sub-Foremen.

Offices of Assistant General Managers (including Transportation Office, but excluding Prior Service Record Bureau)
 Office of Chief of Personnel (as now constituted)
 Office of Legal Department (including office of Chief Claim Agent)
 Office of Director of Public Relations
 Division Car Distributors at Pueblo, Grand Junction and Salt Lake City
 All off line traffic offices
 Depot Passenger Agents

“(c) The following positions are within the scope of the agreement and all rules apply, except Rules 4, 10, 12, 17, 36, 37, 41, 43 and 49 (a). All positions within this group when vacant and filled will be bulletined in accordance with Rule 10 as a matter of information only:

Chief Engineer
 Chief Clerk
 Secretary
 Contract Man

* * * * *

“Also employes assigned to road service where special training, experience and fitness are necessary.

“NOTE: It is understood that the provisions of the Overtime, Call, Sunday and Holiday rules will not be evaded by assigning work performed on a position coming within all rules of the agreement to employes excepted from the provisions of the Overtime, Call, Sunday and Holiday rules, outside their tour of duty.”

And this is the Scope Rule as it appears in the printed agreement of June 1, 1941.

It is readily apparent that the position of Warehouse Foreman at Denver, an excepted position in the 1926 agreement, is not included in the agreement of June 1, 1941, and is still an excepted position as are positions of Foremen of like character, all of which were purposely left out of the various proposals covering a scope rule.

The Carrier holds that the position in question is a supervisory position, and entirely outside the scope of the agreement. This Foreman has direct supervision and authority over the following force.

1 Assistant Foreman
 1 Derrick Foreman
 5 Check Clerks
 1 Delivery Clerk
 1 Seal Clerk
 1 Warehouse Clerk
 35 to 50 Callers, Stowers and Truckers,
 depending on volume of tonnage to be handled.

In other words occupant of this Foreman's position regularly has under his direction an average force of from 45 to 60 men, which fact, together with the fact that the position has not heretofore and is not now included within the Scope or any other rule of the agreement, is clear and ample evidence of the supervisory character of the position.

OPINION OF BOARD: The position of foreman at the Denver Freight Station became vacant and the Carrier filled it by appointment.

The Committee claims that the position belonged to the senior qualified employe and that it should have been bulletined under the rules. The Carrier claims that it is not covered by the agreement. This is the only question before this Board. The Scope Rule of the agreement reads as follows:

"ARTICLE I

"Rule 1. These rules shall govern the hours of service and working conditions of the following employes, subject to exceptions noted below:

- "Group 1. CLERKS
 (a) Clerical Workers
 (b) Machine Operators

"Group 2. Other office, store and station employes, such as office boys and messengers; train and engine crew callers, telephone switch-board operators; office, store, station and warehouse watchmen and janitors; power truck motormen; Store Department truck drivers used in Store Department work, including operators of mechanical lifting devices used in and around freight stations and storehouses; Store Department helpers; Reclamation Plant helpers when operated by Store Department; employes engaged in sorting coupons, tickets, way-bills, and cut up car records; stowers, callers, loaders and coopers.

"Group 3. Station, platform, warehouse, transfer, storeroom, stockroom, house and team track freight handlers and truckers.

"Laborers employed in or around stations, warehouses and Store Department."

There follows a list of excepted positions, being in the main those of employes in the offices of high officials. Then there is a long list of positions which are specifically designated as within the agreement but to which certain rules do not apply. There is no mention anywhere in the agreement of warehouse foremen. In this respect the agreement is distinctly different from the preceding one which was superseded by the present one June 1, 1941. The earlier agreement specifically included within its coverage Warehouse Foremen "except Foremen who supervise Assistant Foremen or Sub-Foremen." It is conceded by the Committee that the holder of the position here involved, that of Warehouse Foreman at Denver, was a foreman who supervised Assistant Foremen or Sub-Foremen, and therefore was not covered by the earlier agreement.

The contention of the Committee is that the parties have applied the present agreement to Warehouse Foremen and that foremen generally, except those supervising sub-foremen or assistant foremen, have always been regarded as covered. Therefore it is argued that when the exception was dropped from the current agreement it was the intention that all foremen should be covered.

We do not think that this result follows. It might as well be argued that, because the specific coverage of Warehouse Foremen in the old agreement does not appear in the new one, it was intended that no foreman should be covered. The Carrier has not so applied the agreement. Apparently Warehouse Foremen are regarded as Clerical Workers who are defined by Article II, Rule 2 (a) to be: "Employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work." In certain of the larger places, of which Denver appears to be one, Warehouse Foremen do not devote at least half of their time to the performance of purely clerical duties. Their work is largely supervision. Therefore they do not come within the classification of

clerical workers and the net effect of the Scope Rule is to leave the situation as it was under the old agreement. Warehouse Foremen are covered, except those Supervising Foremen who do not devote four hours a day exclusively to writing and calculating and other clerical work set forth in Article II, Rule 2 (a).

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, approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.