

Award No. 3653

Docket No. CL-3578

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

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, on February 6, 1946, it failed and refused and continued to refuse to correct the classification of "Trucker" at Coffeyville, Kansas, position occupied by W. D. Norris, to that of "Breaker" and adjust the rate of pay upward two cents (2c) per hour, maintaining the proper differential over that of Trucker, established under the Clerks' Wage Agreement;

2. That W. D. Norris and/or occupant or occupants of the position here involved at Coffeyville, shall be paid the amount of difference of two cents (2c) per hour in the rate of "Breaker" over that of "Trucker" for each such hour worked, retroactive to and including February 6, 1946, on which date W. D. Norris filed claim with the Agent.

EMPLOYES' STATEMENT OF FACTS: On February 6, 1946, at the time this dispute and involved claims arose, the record of assigned positions and the hours of service in the Freight Warehouse at Coffeyville, subject to the scope and operation of the Clerks' Agreement, according to the Superintendent's notice dated December 22, 1945, issued and posted in accordance with Rule 21(b) of the Clerks' Agreement were:

Position	Week Day		Meal Period		Sunday and Holiday		Rest Day
	From	To	From	To	From	To	
W. H. Foreman	8AM	5PM	12N	1PM	None		Sunday
Trucker	8AM	5PM	12N	1PM	None		Sunday
Trucker	8AM	5PM	12N	1PM	None		Sunday
Trucker	8AM	5PM	12N	1PM	None		Sunday
Trucker	8AM	5PM	12N	1PM	None		Sunday
Trucker	8AM	5PM	12N	1PM	None		Sunday
Check Clerk	8AM	5PM	12N	1PM	None		Sunday

W. D. Norris, whose seniority date on the Group 3 seniority roster of the Southern Kansas-Central Division, Station and Yards Department is July 13, 1942, was the regularly assigned occupant of one of the five positions classified as "Trucker."

On February 6, 1946, Mr. Norris wrote to the Local Freight Agent of the Missouri Pacific Railroad at Coffeyville, copy to the Division Chairman of the

which gives rise to a reasonable inference that the rate established contemplated a higher degree of performance by the employes (truckers) than was expected at large points where platform classifications carrying a differential rate were maintained and consequently the facts presented do not justify the creation of the classification sought. Last, but not least, the employes and the Organization have stood by for at least nine years without complaining of any irregularity in the force, classification or rates involved at that point although furnished with copies of the Carrier's rate sheets applicable to that point on numerous occasions during the interim. The Carrier has also granted several wage increases based on and applicable to the classifications now existing at Coffeyville. The working agreement governing wages and working conditions of employes represented by this Organization was completely revised in 1943, at which time the force employed in the freight house at Coffeyville was the same as at the time this claim was presented, yet the employes stood silent on this classification at Coffeyville at that time.

The claim should be dismissed for lack of jurisdiction, if not, denied.

OPINION OF BOARD: For several years prior to November 1, 1928, the Carrier maintained the following positions at the freight house, Coffeyville, Kansas:

One freight warehouse foreman.	
One delivery clerk.	
One stowman	rate 49c per hour.
One breaker	rate 49c per hour.
Two truckers	rate 47c per hour.

The Mediation Wage Agreement of November 15, 1928, recognized the two-cent differential in favor of breakers over other truckers, although the synonymous term "picker" was used in the Agreement.

During the depression years, the force at Coffeyville was curtailed. On August 1, 1937, it consisted of only:

One warehouse foreman.
One trucker.

Subsequently, as times got better, this force was augmented until, on December 27, 1943, it consisted of:

One warehouse foreman.
One check clerk.
Three truckers.....rate 73c per hour.

W. D. Norris, the claimant, started to work as a trucker at Coffeyville July 15, 1942. His assigned duties, the same as those assigned the other truckers were:

"Load trucks in cars, calling names of consignees to check clerk as trucks are loaded, truck freight to warehouse truck freight into cars from warehouse and truck freight from warehouse to consignees or draymen."

On February 6, 1946, Norris asked the Carrier to increase his hourly rate by two cents, on the ground that he was performing the same work that had been done by the breaker prior to the abolition of that position. The Carrier denied Norris' request; the claimant now asks for the difference retroactive to the date of Norris' request.

The Organization contends that the Carrier violated Rule 31 (a) and (c) of its agreement with the Carrier in refusing to adjust the rate:

(a) "The rates of pay for new positions will be in conformity with wages for analogous positions of similar kind and class in the seniority district where created; if no existing position in the seniority district, then the rate of pay for the new position will be established with due regard to the rates attaching to comparable positions on other seniority districts."

(c) "Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such

positions; employes temporarily assigned to lower rated positions shall not have their rates reduced."

In a discussion of Norris' duties, the Organization introduced copious testimony to show that Norris was performing the functions of a breaker (or picker) in contrast with those of an ordinary trucker. This came from the men working with Norris, or familiar with the job. (Employes Exhibits "R," "S," "T," "U," "V," "W," "X," "Y.") To the contrary, the Carrier stated that Norris was "performing the same class of service and work performed by the other truckers at Coffeyville and by truckers at numerous other similar stations all over this railroad." The Carrier further pointed out that stowmen, pickers or callers were employed at only 17 of the 55 stations where truckers were used. The Carrier defined the work of a breaker or picker as follows:

"Pickers are generally under the direct supervision of a check clerk and remain with him at the point where the freight is being checked unless otherwise instructed. He sorts freight into lots or shipments. He examines each article and calls clearly to the check clerk the name of the consignee, destination and identifying marks appearing on the package. He calls the check clerk's attention to any exceptions he notes in the condition of the packages. He loads hand trucks and floats, notifies the check clerk when trucks or floats are loaded and ready to move, informing him of the number of items loaded. He assists in opening car doors, breaking seals and removing stakes from trailers. He sees that the checker's light is connected and placed in cars. He sees that racks, bars and other tools are available. He assists in breaking down and leveling off loads in loaded cars, and in closing car doors, and he performs such other manual labor incident to the operation and housekeeping of the freight platforms and warehouses as may be required."

The Carrier concluded that "none of the truckers at Coffeyville are required to stay with the check clerk as is generally required of pickers and callers."

On the facts in this case we find that Norris was performing substantially the same work as his predecessor "picker" or "breaker" performed in the "Twenties and early Thirties," and therefore is entitled to the two cent differential.

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

Agreement violated to extent indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.