

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement when it abolished Lumberyard Foreman-Tie Inspector position held by L. H. Cook at Sheridan Tie Plant on December 1, 1946, and assigned his duties to the General Foreman, W. L. Hughes, Sheridan Tie Plant;

(b) That L. H. Cook's position of Lumberyard Foreman-Tie Inspector be reestablished;

(c) That L. H. Cook be reassigned to the duties of the position of Lumberyard Foreman and Tie Inspector and be paid for monetary loss sustained;

(d) That other employees who were displaced by L. H. Cook exercising seniority be reinstated to former positions and paid monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 1, 1946 at Sheridan Tie Plant, Mr. W. L. Hughes held position of General Foreman, seniority date March 10, 1924.

Carrier notified L. H. Cook (whose seniority date is December 30, 1918) that his position of Lumberyard Foreman-Tie Inspector position was abolished December 1, 1946.

Mr. Cook's duties for the last 25 years has been to supervise all employees at the Sheridan Tie Plant except Tie Handlers. His work consisted of distributing time slips to tie plant employees, taking them up and checking them for schedules on piece work, line up derrick crews, supervise work at Mill and Lumber line, check lumber in stock books and report all shortages to the District Storekeeper, line up switch list and 61 report, supervise loading of A. F. E. requisitions, inspect ties, inspect lumber coming into Sheridan Tie Plant for rejects and give reasons in writing for the rejects, check loading and unloading of cars for errors in extensions and supervise the lumber yard in having it kept clean, having alleys clear and water barrels filled and fires prevented.

When Mr. Cook's position was abolished on December 1, 1946 the above duties were assigned to General Foreman Mr. Hughes. Mr. L. H. Cook exercised seniority to Derrick Operator, and other employees exercised their seniority accordingly.

2. The continuing need for general supervision of all activities justified the retention of the position of General Foreman and discontinuance of the subordinate position of Lumberyard Foreman-Tie Inspector.
3. Such action did not violate the meaning or intent of any rule of the agreement or any interpretation thereof made under Rule 63.
4. The position of General Foreman is included in the scope of the agreement.
5. Previously "excepted" positions were included in the scope of the agreement effective July 1, 1942 with the understanding that such inclusion would dispose of the question of jurisdiction of work.
6. There is no rule, precedent, or practice to prohibit the discontinuance of a supervisory position when the need for it no longer exists.

The entire claim falls before these facts, and it should be denied in its entirety.

(Exhibit not reproduced.)

OPINION OF BOARD: The Carrier maintains and operates a plant at Sheridan, Wyoming, for storing, seasoning and treating cross ties necessary for the maintenance of track, and a similar processing of bridge materials used in the construction and maintenance of bridges. Prior to October 14, 1946, a force of 51 employes was maintained at this plant, including a General Foreman and a Lumberyard Foreman-Tie Inspector. The two positions were supervisory in character, the General Foreman being the superior officer of the two. On October 14, 1946, due to the failure of the Carrier to procure ties and bridge material, a reduction of force was initiated. Sixteen positions were abolished on October 14, 1946, four more on December 1, 1946, and six more on December 17, 1946. One of the positions abolished on December 1, 1946 was that of Lumberyard Foreman-Tie Inspector, the position held by the claimant. The Organization contends that the Carrier violated the Clerks' Agreement when it abolished this position and assigned the remaining work thereof to the General Foreman.

The position of Lumberyard Foreman-Tie Inspector is wholly within the Clerks' Agreement while that of the General Foreman is excepted from the rules governing promotion, assignment, displacement and compensation. The Organization contends that all the work of the Lumberyard Foreman-Tie Inspector remained and that all the former work of the position was assigned to the General Foreman. The Carrier contends that the discontinuance of work at the plant had the effect of reducing the amount of supervision required and that it acted in conformity with Agreement rules when it elected to abolish the position of one of the two supervisory officers.

We adhere to the general principle that the amount of supervision to be employed in the performance of work is a matter which management alone may determine. This is so fundamental to the fixing of responsibility on management for the efficient operation of its railroad that to rule otherwise would operate to destroy the very responsibility with which management is charged. Consequently, we are obliged to say that the Carrier could properly reduce the number of supervisory positions in the Sheridan Tie Plant. The question remaining is whether it has effectively done so, that is, was the reassignment of the work of the position done in accordance with contract rules, and, if not, did it have the effect of keeping the position of Lumberyard Foreman-Tie Inspector in existence?

The dispute centers around the claim of the Organization that the Carrier could not abolish the fully covered position of Lumberyard Foreman-Tie Inspector position and assign the remaining work of that position to the General Foreman whose position is excepted from the promotion, assignment,

displacement and compensation rules of the Agreement. The duties of the General Foreman were to supervise all the work connected with the Sheridan Tie Plant. The duties of the Lumberyard Foreman-Tie Inspector consisted of distributing time slips to Tie Plant employees, taking them up and checking them for schedules on piece work, lining up derrick crews, supervising work at Mill and Lumber Line, checking lumber in stock books and reporting shortages to the District Storekeeper, lining up switch list and 61 report, supervising loading of A. F. E. requisitions, inspecting ties, inspecting incoming lumber for rejects and giving reasons in writing for rejects, checking loading and unloading of cars for errors in extensions and supervising the lumberyard in having it kept clean, having alleys clear and water barrels filled for the elimination of fire hazards. The reduction of force heretofore shown would of necessity reduce the work of the position. We do not concur with the Organization, therefore, that all of the work of the position existing prior to October 14, 1946, was assigned to the General Foreman after the position of Lumberyard Foreman-Tie Inspector was abolished. It is self-evident that the number of employees supervised has a direct relation to the amount of work of the position and that a reduction of force necessarily brings about a reduction of the work of the position. It is just as evident that a failure to procure ties and bridge materials would reduce the work of the Lumberyard Foreman-Tie Inspector.

It is contended that the abolition of the Lumberyard Foreman-Tie Inspector is violative of Rule 7, current Agreement, providing:

"Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail."

There was no violation of this rule. The General Foreman was not subject to it. The Lumberyard Foreman-Tie Inspector was. This left the Carrier free to abolish the latter position without considering the seniority rights of the General Foreman.

It is also contended that Rule 42, current Agreement, was violated. This rule 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 rate of pay or evading the application of these rules."

It will be observed in the present case that a new position was not created to perform the work of the Lumberyard Foreman-Tie Inspector at a reduced rate of pay or to evade rules. In fact, no new position was created at all. The remaining work was assigned to a position already in existence. The contention that a new position was created when the remaining work of the Lumberyard Foreman-Tie Inspector was assigned to the General Foreman is without merit. If the addition of any work operated to create a new position, every assignment of the remaining work of an abolished position would be violative of the Agreement. No such result was intended. The position to which it was assigned was within the scope of the Agreement, although excepted from certain rules thereof. The work was not removed from the scope of the Agreement,—it is Clerk's work and it was assigned to a Clerk. As we have hereinbefore said, the determination of the amount of supervision to be employed is the prerogative of management. Management has the right to reduce its supervisory force as it did. Ordinarily, the lesser position would be abolished rather than the superior position. The Carrier pursued that policy in the present case. We find no violation of rules in the case before us.

It is urged that Award 3396 determines the result in the present case. We think not. In that case, a position fully covered by the Agreement was abolished and the duties thereof assigned to a newly created position partially excepted from the Agreement. The decision in that case rests on the

violation of the rule against discontinuing an established position and creating a new one under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or avoiding the application of the rules of the Agreement. Award 3396. While this award does contain some language favorable to the position of the Organization in respect to assigning the remaining work of an abolished position to a partially excepted position, we think the correct rule is recited in Award 3563, Interpretation No. 1, as follows:

"We are of the opinion that the remaining work of an abolished position which was within the Clerks' Agreement may properly be assigned to any position within the scope rule of that Agreement. This is so whether or not such position to which it was assigned is excepted from some of the rules of the Agreement. It is argued that as the abolished position was placed under all the rules of the Agreement by negotiation that the remaining work could not be assigned to a partially excepted position except by negotiation. The answer to this contention is that the occupant of the position and not the work is excepted from the specified rules. The parties have already agreed in Rule 7 (c) that certain rules do not apply to the position to which this remaining work was assigned. But the work still remains within the scope of the Agreement and its assignment to the Chief Rate Clerk is in accordance with the contract made."

Other awards of this Division support the rule announced. See Awards 3866, 3867, 3878.

We conclude that the action of the Carrier was not violative of the controlling Agreement and that no basis for an affirmative award exists.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of December, 1948.