

Award No. 4274

Docket No. CL-4235

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

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

THE JAY STREET CONNECTING RAILROAD

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

1. The Carrier violated the provisions of the Clerks' Agreement, the National Wage Agreement of September 3, 1947, and the Memorandum Agreement covering positions of Watchmen and Gatemen, when it:

- (a) Removed employes and their duties of Watchmen and Gatemen from the Scope of the Clerks' Agreement and the pay roll of the Carrier and placed these employes, J. McGrath, C. Morton, W. Dennis, J. Lavin, P. Slikas and M. Farley, on the pay roll of the Famous Realty Company, and
- (b) Reduced the hours of service, reduced the rate of pay from \$65.52 to \$54.36 or less per week, refused the employes the right to exercise seniority and dismissed employes without investigation and hearing.

2. The Carrier shall restore all affected employes, with all seniority rights, to the pay roll and seniority roster of the Jay Street Connecting Railroad and shall compensate all affected employes for monetary losses, retroactive to September 12, 1947.

EMPLOYEES' STATEMENT OF FACTS: On September 11, 1947, a notice, signed by Lester Wittnebert, Superintendent, was posted stating that all of the above named employes positions of Watchmen & Gatemen were abolished. On September 12, 1947, all Watchmen & Gatemen were removed from the pay-roll of the Jay Street Connecting Railroad and the Seniority Roster of the Clerks' Agreement and placed on the pay-roll of the Famous Realty Company.

The duties of one Gateman position, owned by J. McGrath, was discontinued effective September 12, 1947. He was refused the right to exercise seniority to another position held by a junior employe. P. Kerin whose position of Trucker was abolished effective September 24, 1947, was refused the right to exercise seniority to position of Gateman held by a junior employe.

The seniority dates of the affected employes are as follows: P. Kerin, 1-10-28. J. McGrath, 3-13-30. M. Farley, 4-12-37. C. Morton, 11-24-38. W. Dennis, 5-8-41. J. Lavin, 2-3-42. P. Slikas, 1-28-43.

Railroad. Their work consisted of ringing in at various ADT Stations each hour, which stations are maintained by Famous Realty Inc. and by virtue of which said company secures a reduction in fire insurance premiums on policies covering the various buildings owned and operated by Famous Realty Inc. In connection therewith, the presence of such individuals in the westerly portion of the property owned by Famous Realty Inc. accrued somewhat to the benefit of Arbuckles Jay Street Terminal, Inc., which company operates storage warehouses in buildings owned by Famous Realty Inc., in and around which buildings some ADT Stations exist. The remainder of the working time of these individuals is spent in doing nothing more than sitting and waiting for the next tour to resume the hourly ringing once again.

The Jay Street Connecting Railroad, finding itself the victim of many thefts and petty pilferages, none of which was ever hindered or reported by the individuals in question, saw fit to employ four commissioned, armed and uniformed police officers in an attempt to protect itself from the onslaught of petty thievery. This move was made in the early part of last year and we are happy to say that our losses from this type of crime have been reduced to almost nil. It, therefore, became more clearly evident as time went by that the Watchmen and/or Gatemen served no purpose whatever and it was, therefore, decided that this Company was in no need whatever of the services of men in this particular category and the jobs were duly abolished.

This move, of course, did not relieve Famous Realty Inc. of its desire to keep watch over its real estate holdings and to avail itself of the benefits of the ADT System and its use as outlined above. In the interests of humanity and sentimental fairness to old employees, however, Famous Realty Inc. took into employment those individuals of the aforementioned group of Watchmen and/or Gatemen whom it thought could serve the purpose desired, in spite of the fact that these men are all rather old, for the most part unemployable in any other capacity and, undoubtedly, potential unemployables in general. These men are paid more than any individuals performing the same services in the neighborhood for other companies and are, to the best of my knowledge and belief, happy and contented in their present positions. Their services, both while in the employ of this Company and while in the employ of Famous Realty Inc., have been and are performed under the complete jurisdiction and authority of Mr. Edward W. Rose, Property Supervisor of Famous Realty Inc.; Mr. Rose is not on the payroll of the Jay Street Connecting Railroad and never has been.

The facts hereinabove recited prove, in our opinion, that the only mistake made by The Jay Street Connecting Railroad was in its failure to abolish these jobs sooner. We did, however, take this action as soon as the full truth of the matter became apparent. It must be borne in mind that we have but recently (July 13, 1945) acquired these holdings and that two years is, indeed, a very short space of time in which to study, analyze and correct all the incongruities which we found extant here.

OPINION OF BOARD: This is exclusively a factual controversy. The Carrier contends that it abolished the positions referred to in the Claim because these were no longer useful to it, while the Petitioner says that the Claimants were arbitrarily removed from said positions, with consequent losses of wages and seniority.

The facts are involved and complicated and no good purpose would be served by restating them here. The dispute arose when the Claimants were transferred from the roll of employees of the Carrier to that of the Famous Realty Company, a separate corporate entity. The Carrier says that its need for the positions had long since ceased and that the Claimants' services had for some time been for the exclusive benefit of the Realty Company, rather than for it. This is disputed by the Petitioner. Be that as it may, we must conclude that the record does not affirmatively disclose that the Petitioner has discharged the burden resting upon it to establish the facts necessary to sustain the Claim that the positions of Gatemen and Watchmen were im-

properly removed from the Agreement. Claimants were and are, however, entitled to exercise their seniority rights applicable to positions other than those of watchmen and gatemen positions discontinued by the Carrier.

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 record does not establish that the Carrier violated the Agreement except to the extent that it may have done so as indicated in the Opinion.

AWARD

Claim disposed of as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.