

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

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

- (a) That Carrier violated Agreement Rules when it abolished Janitor Position 15, rate \$9.53 per day, Office of Superintendent Motive Power and Machinery at St. Paul Shops, effective March 20, 1948, and assigned the duties of this position to Janitor Position 29, rate \$8.21 per day, and
- (b) That Janitor William Nagle now be additionally compensated \$1.32 for each day of assignment from March 20, and continuing.

EMPLOYES' STATEMENT OF FACTS: Under date of March 18, 1948, abolishment bulletin was issued by Acting Superintendent Proctor, abolishing janitor position No. 15, effective March 20, 1948. Copy attached hereto and made a part hereof titled "Employees Exhibit A".

Janitor position No. 15 had been established prior to Carrier coming under Federal Control in 1918, and was continued in existence until March 20, 1948.

Local Chairman in letter of March 23 confirming conference of March 19, protested abolishment of Janitor Position No. 15, rate \$9.53 per day, and assignment of such work to William Nagle, assigned incumbent of Janitor Position No. 29, rate \$8.21 per day, in the same seniority district, submitting claim for the difference between \$9.53 and \$8.21 per day for each week day worked by Janitor Nagle from March 20, 1948 and continuing. Copy attached hereto and made a part hereof titled "Employees Exhibit B".

April 5, 1948 bulletin was issued, effective April 7, abolishing Janitor Position 29, rate \$8.21 per day, and re-establishing Janitor Position No. 15, rate \$9.53 per day, effective April 8, 1948. Copy attached hereto and made a part hereof titled "Employees Exhibit C".

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date of July 16, 1926, from which the following rules thereof read:

duties of a position carrying a higher basic rate than that for which he was compensated. The duties assigned to janitor positions in the Mechanical Department at St. Paul are substantially the same, and the rates of pay must under provisions of applicable schedule rules be the same for the reason the positions are of equal scope and responsibility. The monthly rates of \$209.32 and \$242.93 have never been negotiated with the brotherhood.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective March 20, 1948, the Carrier declared Janitor Position 15 to be abolished and assigned the duties of Janitor Position 15 to the incumbent of Janitor Position 29. Prior to March 20, 1948, Janitor Position 15 carried a rate of \$9.53 per day; the bulletin that re-established Janitor Position 15 on April 8, 1948, stated that the position carried "Rate \$9.53 per day." This Board finds that the action of the Carrier in this matter was in violation of the Agreement between the parties. Rule 59 of the Agreement provides:

"Rule 59. Positions (not employees) shall be rated, and the transfer of rates from one position to another shall not be permitted, except by agreement with the accredited representative of the employees."

Rule 60 of the Agreement provides:

"Rule 60. Employees assigned to higher rated positions shall receive the higher rates while performing the work of such positions; * * *"

Rule 61 of the Agreement provides:

"Rule 61. Established positions shall not be discontinued and new ones created under a different title covering the same work for the purpose of reducing the rate of pay or evading the application of these rules."

The record clearly establishes that the unilateral action of the Carrier in this case was in violation of the above quoted rules. Janitor William Nagle shall be additionally compensated \$1.32 for each day of assignment from March 20, 1948, to April 7, 1948. This award is without prejudice to the rights of either party in respect to any future determination of whether or not the Carrier must in the future continue to rate Janitor Position 15 at \$9.53 per day.

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 Carrier violated the Agreement.

AWARD

Claims (a) and (b) sustained to extent indicated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.