

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**

CLINCHFIELD RAILROAD COMPANY

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

1. The carrier violated the Clerks' Agreement, when on February 7, 1949, it abolished the position of Warehouse Foreman at Kingsport, Tennessee, and transferred part of the duties attaching to the position of Warehouse Foreman to the Agent (a position not covered by the scope rule) and the remaining duties were parceled out to lower rated employees.

2. The carrier shall restore the position of Warehouse Foreman, \$252.60, per month, and reimburse Mr. Paul Kinkead for wage loss incurred in the amount of difference between \$252.60 per month and \$235.60 per month, effective February 7, 1949, until the position of Warehouse Foreman is restored.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 1, 1936, all employees working in the warehouse at Kingsport, Tennessee, Local Freight Station were classified and paid 30c per hour as truckers. To comply with the provisions of the Clerks' Agreement effective February 1, 1936, two clerical positions were created in the Warehouse; Warehouse Foreman with rate of pay of \$120.00 (now \$252.60) per month and Check Clerk with a rate of pay of \$103.00 (now \$235.60) per month.

Subsequent to February 1, 1936, due to volume of freight handled at the Freight Station two positions were created to help perform the clerical duties, titled, Warehouse Clerk, with a rate of pay of \$242.00 per month, and one or more additional Check Clerk positions with a rate of pay of \$235.60 per month.

Prior to February 7, 1949, due to the decrease in the volume of freight handled the force was reduced until there were four clerical positions remaining in the Warehouse, namely, Warehouse Foreman, Warehouse Clerk, and two Check Clerks.

Contrary to the Agreement rules the Superintendent, Mr. J. F. Meredith, issued the following instructions abolishing the position of Warehouse Foreman;

Erwin, Tennessee, February 3, 1949
Mr. W. W. Randolph:

Further in connection with phone conversation yesterday with reference to reduction in your warehouse and office force.

the attempt to settle the dispute on the property, quote Section 5 (p) in support of their position.

Section 5 (p) is as follows:

"Established positions shall not be discontinued and new ones created under a different title, covering substantially the same duties, for the purpose of reducing the rate of pay or of evading the application of any of the terms of this agreement."

In the first place, no new position has been created, for the purpose of reducing the rate of pay or for any other purpose.

The position was abolished because the volume of business handled at the agency simply no longer warrants the use of two men to supervise the work of checkers and truckers. Since the duty of overseeing the work is that of the agent, and always has been, with or without the assistance of a foreman, the latter was logically and correctly cut off. Carrier could not do without the services of the agent at this station, and does not need the foreman. Why then, in all reason and fairness, should carrier be forced to maintain a position at considerable expense when it does not need such position for the proper handling of its business?

At small agency stations the agent is the only employee. The volume of business handled obviously determines the number of employees required and carrier is unable to agree that when the volume of business is greatly reduced, as it has at Kingsport, it cannot discontinue positions no longer needed.

A part of the agent's duties is to supervise the work of checkers and truckers. When the amount of business justifies it, carrier provides a foreman to assist the agent in this respect. When the volume does not warrant it, no foreman is provided. When a foreman has been provided, and is no longer needed, carrier insists that it has the right to dispose of the position.

Employees have stated on the property that the fact that the agent is now supervising the work is in violation of the agreement. The agent has always been in charge of the station and there has been no change in that respect either with or without a foreman.

Carrier insists that since the volume of the business handled at Kingsport is so greatly reduced as to render additional supervision other than by the agent unnecessary, it has not violated the agreement by abolishing the position of warehouse foreman.

Carrier respectfully requests that this claim be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: On February 7, 1949, there were four positions being worked in the freight house at Kingsport, Tennessee. They consisted of a Warehouse Foreman, Warehouse Clerk and two Check Clerks. On February 7, 1949, the position of Warehouse Foreman was abolished and the Claimant, the occupant thereof, exercised his displacement rights to one of the clerk's positions remaining in the freight office. The Organization contends that the abolition of the Warehouse Foreman's position was in violation of the Clerks' Agreement, particularly Section (p), Article 5, Current Agreement, providing:

"Established positions shall not be discontinued and new ones created under a different title, covering substantially the same duties, for the purpose of reducing the rate of pay or of evading the application of any of the terms of this agreement."

It is the contention of the Carrier that the Agent, an employee under the Telegraphers' Agreement, has general charge of the freight office and that a foreman is required only when the duties of the Agent become too burden-

some for him to perform. Carrier urges that where the work in the freight house decreased to such an extent that the supervision of a foreman is not required, that it may abolish the foreman's position and leave the supervision entirely in the hands of the Agent.

We think it is within the province of the Carrier to determine the amount of supervision needed to properly expedite the work. If the foreman's position is not required and the supervisory duties of the position can be handled by other supervisory officers who are entitled to perform it, we can find no rule of the Agreement prohibiting such handling. Likewise, if any clerical work performed by the foreman remains, it may be assigned to clerks.

The Organization asserts, however, that supervisory duties of the foreman's position were performed by Claimant after he displaced one of the occupants of a clerical position in the freight house. There is no evidence that he was instructed to perform supervisory duties by bulletin, oral direction, or otherwise. Carrier states that any such work performed by Claimant was not by direction of the Carrier. An employe may not voluntarily perform supervisory service without authority and subsequently assert such service in support of a claim.

The record does not establish that the remaining work of the Warehouse Foreman was improperly assigned. Nor is any rule pointed out that requires the establishment of a foreman's position at this point. The evidence does not show that another lower-rated position was created to do the work of an abolished higher-rated position. There is no basis for a sustaining award.

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 Employee involved in this dispute are respectively Carrier and Employee 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 4th day of August, 1950.