

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the rules of the Clerks' Agreement when it abolished the position of Storekeeper, Winnemucca, Nevada, effective January 31, 1949, and thereafter turned the work of receiving, issuing and handling store material at Winnemucca over to employees not covered by the Agreement.

(2) The Carrier reestablish and re-assign the position of Storekeeper at Winnemucca in accordance with the Rules of the Clerks' Agreement.

(3) Mr. E. E. Christian and all other employees adversely affected by reason of action of the Carrier in abolishing the position of Storekeeper at Winnemucca be compensated for all wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: The position of Storekeeper at Winnemucca, Nevada has been within the scope and operation of the Clerks' Agreement from the date the first Clerical Agreement became effective on the property. This position remained under the Agreement until it was removed therefrom by the unilateral action of the Carrier, effective January 31, 1949, (Employees' Exhibit "A").

*The duties of Storekeeper at Winnemucca were as follows:

Checking stock of all materials on hand including ice, wheels, sand, oils, grease & waste, lumber, firebrick, pipe, bar and sheet iron, bolts & nuts, pipe fittings, track materials other than cross-ties, tools, cabooses supplies, etc.

Ordering of any materials, tools or cabooses supplies required for use of M. P. & C. or Transportation Departments.

Unloading of all materials other than sand and ice when received from General Store or on direct purchase, including lubricating oils from tank cars into storage tanks in oil house.

*As evidenced by Mr. Christian's statement dated March 28, 1950. (Employees' Exhibit "B")

and accounting, of the Store Department and was under the control of and handled by employees in other departments.

In discontinuing the branch store, the issuance of material and supplies was not removed from jurisdiction of the Store Department; they are still issued by Store Department employees in the General Store. Sustaining this claim would be tantamount to saying that a Store Department employee should be maintained on each section, in each roadway gang and in every office to hand each item to the employee using it.

The Organization has contended that material and supplies at Winnemucca were kept in the same building subsequent to February 1, 1949. Surely, there is no provision in the Clerks' Agreement controlling the assignment of company buildings or the purpose for which such buildings are used.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's Store Department maintains its General Store and Headquarters at Sacramento, California, with branch stores at various terminals where the volume of repair work performed by Mechanical Department forces warrants the maintenance of a large amount of stock locally. Each branch store is under the charge of a storekeeper. Such a store had been maintained at Winnemucca, Nevada, since 1930, or earlier until it was discontinued on February 1, 1949, because, as Carrier states, the repair work at this point had decreased to an extent that the necessity for maintaining a large stock there no longer existed.

The Organization contended that the Carrier thereafter assigned the work of issuing materials and supplies, including the maintenance of stock records at this point, to employees under other Agreements and to an employee in another seniority district. This the Carrier denies. It contends that with the discontinuance of the branch store, supplies and materials were issued by employees under the Clerks' Agreement in the Sacramento General Store where stock records were also maintained.

It appears from the record that Motive Power and Car Department employees help themselves to such stock as they may need from the old store building, and the roundhouse clerk, under the Agreement but in another district, orders and keeps a record of stock on hand among other duties assumed after and as a result of the abolishment of the position in question.

We find nothing in conflict with the rules insofar as the procuring and handling of supplies by the using department is concerned in the instant case. Clerks do not have exclusive right to this work and where incidental and necessary to the work of others, it is permissible practice for the latter to act once custody is transferred.

We have repeatedly held that a Carrier has an absolute right to abolish any position provided the duties of the position are in fact abolished. (Award 255.) However, if the duties are not abolished, the transfer of such duties or work to an employee on another seniority district can only be done after agreement. (Awards 1808, 4076, 4653, 5375.) The Carrier does not controvert the showing made by the Organization that the roundhouse clerk upon another seniority district performed a portion of the duties formerly performed by the storekeeper except to say that the Scope Rule in effect upon this property refers to "positions" and not to "work", hence does not prohibit the action taken. We have rejected this contention in numerous Awards holding that work is a component part of a position. See particularly Award 1314.

It may be possible for the Carrier to redistribute the work of the abolished position so as to avoid breach of the Agreement. It should at least have opportunity to do so, hence we are not inclined to order the re-establishment of the position as requested by the Organization.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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

The Agreement is not violated by the work performed by Motive Power and Car Department employees, but it is offended by the transfer of certain duties to an employee while under the Clerks' Agreement who is in another seniority district.

AWARD

Claim sustained to the following extent:

(1) That the Carrier reassign the work of the position of storekeeper at Winnemucca so as to avoid violation of the Clerks' Agreement.

(2) That former Storekeeper Christian and all other employees adversely affected by the abolishment of his position be compensated for all wage loss sustained from February 1, 1949, to such date as the work of the abolished position be reassigned in accordance with the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1951.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 5397

DOCKET CL-5454

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The Western Pacific Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The sole question submitted for interpretation concerns our intended meaning of the phrase "all wage loss sustained" appearing in the claim and award.

The Carrier, when applying the award, compensated the affected employees upon the basis of the difference between the straight time rate of the position from which displaced and the straight time rate of the position taken. The Organization asserts by so doing the Carrier erred. It contends that the Carrier should have taken into consideration and made allowance for the amount of overtime worked by the displacing employee when compensating the employee wrongfully displaced.

The Organization's contention would be deserving of studied consideration if it had been shown affirmatively that overtime was a regular and essential part of any of the positions involved or affected by the wrongful deprivations of work at Winnemucca, which is to say, a part of the assignment. Failing, we are presented merely with a case of casual overtime which, under numerous awards of this Division notably Award 4244 and citations therein contained, is not compensable.

We find that the method of compensation pursued by this Carrier was proper under the facts of this case and reflects our original intendment.

Referee J. Glenn Donaldson, who sat with the Division as a member when Award No. 5397 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1953.