

Award No. 5486
Docket No. CL-5414

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**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

- (1) That the Carrier violated the rules of the Clerks' Agreement at St. Joseph, Missouri, when it abolished Group 3 position and assigned the Group 3 work to Group 1 positions.
- (2) That the Carrier shall be required to pay M. F. O'Neal and George F. Schiltz, Group 3 employes for all monetary loss sustained, for the period of March 30, 1948, to and including April 30, 1948.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the parties to this dispute, bearing an effective date of August 2, 1945.

Prior to March 30, 1948, the force at the Freight Warehouse at St. Joseph, Missouri, was as follows:

Title	Name	Group	Seniority
Warehouse Foreman	Charles H. Conroy	1	11- 1-16
Check Clerk	Loren E. Hays	1	10-22-41
Stowman	Michael F. O'Neal	3	12-11-18
Night Janitor	George F. Schiltz	3	11- 6-42

March 27, 1948, Michael F. O'Neal received the following notice from Agent E. E. Smith:

"Effective Tuesday, March 30, 1948, the position of Car Stower is abolished, this effective after your tour of duty, Monday, March 29th.

You may exercise your seniority where it will permit."

Michael F. O'Neal displaced the Janitor, George F. Schiltz, rate of pay \$193.91, for the time his position of Stowman was abolished and this forced George F. Schiltz out of work.

Work from the Group 3 position was assigned for the 30-day period to the Warehouse Foreman and the Check Clerk, Group 1 Clerks.

employees holding positions of the same group when such employees are available and on duty."

We understand that the organization agrees that the force reduction or position abolishment rule of the agreement was complied with.

As we understand the claim in this docket, it begins March 31, 1948, and continues to and including April 30, 1948, and involves solely the discontinuance of the stower position in St. Joseph Freight House during that period.

The Board will observe from the rule quoted above that stowers and janitors are in Group 3 and that the rule provides that in case the work of a given group on an abolished position is distributed to another position, it will be assigned to other employees holding positions of the same group when such employees are available and on duty. There was no violation of the rule at St. Joseph between March 30 and April 30, 1948.

It has been the practice at St. Joseph Freight House for the Day Janitor to assist in handling freight to fill out his unoccupied time. Also, the stower did some janitor work inasmuch as part of his tour of duty was during hours when the janitor was not on duty.

There was a reduction in business at St. Joseph resulting in insufficient work to warrant the continuance of three employees, i.e., Freight House Foreman, Check Clerk, and Stower. None of the work at the freight house was performed by any employee not under the scope of the clerks agreement. The Check Clerk and Freight House Foreman assisted in handling of freight during the period of the claim.

Inasmuch as there was no violation of the agreement, we respectfully petition the Board to deny the claim.

OPINION OF BOARD: It is claimed that the Carrier violated the Clerks' Agreement at St. Joseph, Missouri, when it abolished a Group 3 position and assigned the work of that position to Group 1 positions for the period March 30, 1948, through April 30, 1948.

Prior to said abolishment of position the force at the Freight Warehouse was as follows:

Warehouse Foreman	Group 1
Check Clerk	" 1
Stowman	" 3
Night Janitor	" 3

Effective March 30, 1948, the Stowman's position was the position abolished. The occupant thereupon bumped the Janitor, presumably a lower-salaried position, and the former Janitor was out of work. Both men so affected filed claims for monetary loss sustained.

Both parties set forth Rule 1 of the Agreement and call attention to the fact that after grouping the employees subject thereto into four groups or classes, the rule concludes by the following words:

"The purpose and intent of these rules is to segregate the various groups (Groups 1, 2, 3 and 4) of duties as far as conditions will permit, and in case where work of a given group on an abolished position is distributed to another position it will be assigned to other employees holding positions of the same group when such employees are available and on duty." (Emphasis supplied.)

The Carrier states that there was only one Group 3 man working at the point hence of necessity it was required to turn over the remaining work

of the abolished position to Group 1 employees. Carrier further states that its monthly reports of operation show that during the month of March approximately 50% of the time of the stowman was spent in handling LCL freight. The stowman, it contends, also had performed some janitorial work as part of his tour of duty during hours when the janitor was not on duty and that all of his past work was readily handled by the Warehouse Foreman and Check Clerk during the period the position was abolished.

The Organization maintains that there was at least eight hours of Group 3 work remaining, such as trucking, stowing and loading. In proof of this assertion, the Organization offers a statement of a check made by the General Chairman on August 30, 1948, which showed that on that day seven hours of Stowman's work was performed and one hour janitorial work.

We are impelled to find upon the respective showings made that not more than one-half a day's work was left at the time the Stowman's position was abolished. The fact that the Warehouse Foreman and Clerk handled the work in addition to their own is convincing. Operational reports made in the ordinary course of business are entitled to considerable consideration. The weakness in the Organization's proof is the fact that it relates to a single day's operation five months removed from the period in question. Further, we question that weight of shipments handled, standing alone, is a true indication of work time involved on a Stowman's position.

Carrier has assumed by its argument that there was only one Group 3 position in this shift at this point. The Janitor's Group 3 position apparently did not play a part in this dispute below. The position is sometimes referred to in the submissions as a Day Janitor and at other times as a Night Janitor. Again, it is inferred that his shift overlapped to some indefinite degree with the shifts of the three employees directly involved. The indefinite state of the record precludes consideration of that position as a repository of the shifted duties. We assume that the Organization correctly states the factual setting where at page 4 of its initial submission it states:

"The Carrier discontinued the only Group 3 position and then advised there were no Group 3 positions working on the day shift to assign this work."

Under the factual finding made, *supra*, we believe that the Carrier's actions were justified under the rules. The segregation of duties is subjected under the language used by these parties to a rule of reason, i.e., "so far as conditions will permit". The assignment of work of an abolished position within a segregated group is subject to there being some other member of that group "available and on duty". With the abolishment of the Stowman's position there was no other position on the same shift in Group 3 remaining to which the concluding clause of Rule 1 could reply. There is nothing in the rule examined, or by any other rule in the Agreement called to our attention, which requires the Carrier to maintain positions, irrespective of need, merely to have a place within a particular group to which work of an abolished position may be transferred.

Under the circumstances of this case we must hold that Carrier acted within the terms of the Agreement in assigning the disputed work of Group 1 employees.

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:

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.