

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated rules of our current Agreement dated July 1, 1924 when on or about September 3, 1949 it abolished scheduled position of Cashier-Warehouseman at Walsenburg Colorado, Rated \$13.28 per day and concurrently therewith established position of Warehouseman-Clerk, rated at \$11.13 per day to perform relatively the same class of work as did the position of Cashier-Warehouseman.

(2) That Carrier now be required to restore the agreement rate of \$13.28 for the position, retroactive to September 3, 1949, and compensate all employes for wage loss sustained that may have been involved in or affected by this agreement violation from September 3, 1949, to date said violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to September 1, 1949, the station force at Walsenburg Freight Station consisted of an Agent and a Cashier-Warehouseman. The Agent's hours of service assignment were from 8:00 A. M.-5:00 P. M. and the Cashier-Warehouseman's hours from 1:00 P. M.-10:00 P. M.

The Cashier-Warehouseman position was established by Carrier in December 1944 pursuant to Bulletin 551 dated November 29, 1944 with an assignment of duties (brief description) of handling station accounts, billing freight, O. S. & D's, etc. (Employes' Exhibit "A").

It might here be appropriately stated that while the bulletin designated the position of Cashier-Warehouseman as a "temporary position" it was nevertheless continued in existence from the date it was established in December 1944 to and including August 1949.

On August 30, 1949 Mr. R. D. Dowling, the then regularly assigned Cashier-Warehouseman at Walsenburg, applied for and was assigned to position of Cashier at Loveland, Colorado. This created a vacancy in the position of Cashier-Warehouseman at Walsenburg which Carrier, however, bulletined as position of Warehouseman-Clerk, rate \$11.13 per day. (Employes' Exhibit "B").

not now performed by the Warehouseman-Clerk but is being performed by the Agent-Telegrapher.

The Agent-Telegrapher handles all cash, all station accounting, including the cash book and daily balance, making received abstracts, the billing of coal and revising of waybills and rates, also, all mine reports. Most of these were the primary duties of the position of Cashier for which the Cashier rate was established.

Most of the time of the Warehouseman-Clerk is now utilized in the performance of duties generally performed by station laborers, that is, janitor work and the loading and unloading of mail. Such duties do not justify the payment of a Cashier's rate of pay.

The Carrier contends that it was within its rights to abolish the position of Warehouseman-Clerk and distribute the duties to the remaining force and later, when business justifies, restore this position with duties similar to those previously performed on that position, and this was not a violation of Rule 63. The Carrier further contends that it should not be required to restore a position that is not needed for the purpose of paying a higher rate to an employee performing lower rated work.

For reasons above-stated, this claim should be declined.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner.

On or about September 1, 1949, the holder of the job styled Cashier-Warehouseman at the location in question bid off the same. The bulletin which advertised said job listed three (3) duties. Instead of asking for bids on the job vacancy Carrier issued its Notice No. 694, on or about the above mentioned date, asking bids on a job styled warehouseman-clerk. Reference is here made to each of said notices or bulletins for all purposes. It is this act on the part of Carrier which Petitioner contends is violative of and repugnant to Schedule Rule 63 in that the last above mentioned job had relatively the same class of work as the first above mentioned job but at a lesser rate of pay. Admittedly all work of the former job was not transferred to the latter job but Petitioner asserts such portion to be minor in that the duties not transferred to the new job require but 1½ hours per day.

As a guide for decision we were cited to Award 139 (1936). That case seems to turn on the question of "evading the application of these rules". We think the Opinion is well reasoned and sound. In Award 147 (1936), while the Board was concerned with a rule not here before us, the referee mentions two (2) tests which, we think, should be considered in determining our problem, namely relative difference in the importance of the duties performed and the amount of time spent on each class of duties.

Award 236 (1936) has also been cited. In an extremely well-reasoned and most interesting Opinion the referee points out the relative importance of classes of duties theory is not based on a time-clock formula.

We were also cited to Award 1298 (1940). The case is not entirely in point in that it involved a situation where the work had never before been assigned to a lower rated job.

Award 1773 (1942), holds the duties of the new job need not be identical with the duties of the abolished job in order to establish a violation of a rule like the one before us.

Award 2424 (1943) uses the word "substantially" in making the test between the old and new jobs. Award 3225 (1946) used the word "essentially" for the same purpose. Award 3557 (1947) held to change the name but not the duties did not comply with rule requirements. Award 4078 (1948) holds

the old and new jobs need not be "identical" as to content. Award 4688 (1950), makes the test by asking is the end result accomplished by the new job identical with that accomplished by the old. Award 4939 (1950), deals with a type of claim not here before us.

As a general proposition we think it fair to say all duties of a job do not have the same importance that is to say the consequences which flow or result from one act may vastly differ. For instance, some duties or one of the duties of a job may be discretionary in nature and dependent upon the judgment of the employe while the remainder of the duties are purely administrative or ministerial in nature. Likewise the amount of time necessary for the performance of a duty does not absolutely govern the amount of importance a given duty bears to the other duties or duty of a job.

Coming now to the case at hand, as we understood it the dispute does not center around the cashier duties of the abolished job and which were not included in the created job but rather that said latter job covers relatively the same class of work or that Carrier's act is a method or means of evading the Schedule. Assuming the cashier feature of the abolished job required attention of but 1½ hours of the trick the question arises, is the holder of the new job by performing the remaining duties of the old plus the duties described in Employees' Exhibit "B" thereby coming within the rule. The Carrier asserts at least five (5) hours of the new job are required for mail and janitor work which time together with time required for other warehouseman duties establishes that aside from cashier work very little, by reason of decrease of business, was left to be given to the new job. The fact the cashier part of the work was not transferred to a lower rated job is evidence of its relative importance and the fact the holder of the new job in addition to performing the long list of duties of a job which had been in being in the past could also do what was left of the abolished job demonstrates the new job did not meet the qualifications set out in Rule 63. The act of Carrier under the facts does not establish a design or purpose to evade.

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

Petitioner has not established a Schedule violation as alleged.

AWARD

An affirmative Award is not warranted under the evidence of record.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.