

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

**FORT DODGE, DES MOINES & SOUTHERN RAILWAY
COMPANY**

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

(a) That Carrier violated and continues to violate rules of the currently effective Clerks' Agreement dated November 1, 1941, when in June 1951 it changed the title of position of Storeroom Clerk, Boone Shops, Boone, Iowa, to that of Storekeeper without notice, conference or agreement with the apparent purpose, intent and effect of removing the position and the work attached thereto from the scope and other rules of said Agreement.

(b) That the Carrier be required to restore the position of Storeroom Clerk as it existed prior to the date change was made as set forth in Section (a) hereof.

(c) That the vacancy in the position of Storeroom Clerk occasioned by the resignation of the then incumbent, Mr. Fitzgerald, effective June 14, 1951, be bulletined and assignment made pursuant to rules of the currently effective Agreement dated November 1, 1941.

(d) That all employees who may have been adversely affected as a result of this violation be compensated for all wage loss sustained, representing the difference between the rate of pay of their position and the rate of the position to which they would have been assigned, or are hereafter assigned, in the filling of said position of Storeroom Clerk, commencing June 14, 1951, and continuing so long as the violation continues.

EMPLOYEES' STATEMENT OF FACTS: Mr. Fitzgerald was regularly assigned to position of Storeroom Clerk at Boone Shops, Boone, Iowa, rate \$11.63 per day, prior to resigning from the service of the Carrier on or about June 14, 1951, or at the termination of his vacation period. The normal duties assigned to the position of Storeroom Clerk were:

Stocking shelves with incoming merchandise
Filling requisitions from stock room
Taking care of gasoline and oil for Company cars
Keeping up the material spread sheet
Keeping up the inventory work

OPINION OF BOARD: The Carrier maintains a General Storeroom at Boone Shops, Boone, Iowa. This operation is under the direction of a purchasing agent. Prior to June 14, 1951, there was a position of Storeroom Clerk, with a pay rate of \$11.63 per day. The Carrier had difficulty keeping this position filled. For a period of approximately six months in 1951 the average term of service of this Storeroom Clerk's position was approximately six weeks. When incumbent John Fitzgerald resigned June 14, 1951, the Carrier unilaterally terminated the position (Bulletin No. 979). A week later Carrier established another position, that of Storekeeper, which was given a rate approximately \$3.00 per day higher than the Storeroom Clerk's position. The Storekeeper position is not covered by the Clerks' Agreement. The claim now before us arose from the above-stated facts, which are undisputed.

The second paragraph of Rule 1 of the parties' Agreement, effectuated November 1, 1941, provides that,

"Positions or work referred to in this agreement belongs to the employees covered thereby and no work or position shall be removed from this agreement except by mutual agreement." (Emphasis added.)

Also, Rule 46 (a) provides that,

"Established positions will not be discontinued and new ones created under the same or different title covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the applications of these rules." (Emphasis added.)

Our attention is also called to Rule 8, which specifies that,

"Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness, and ability; . . .

* * * *

In filling excepted positions, preferred consideration shall be given to employees coming under this agreement." (Emphasis added.)

The Carrier, after unilaterally terminating the position of Storeroom Clerk, covered by this Agreement, set up an excepted position and brought in an outsider to fill it, contrary to the letter, the spirit and the intent of Rule 8.

Regardless of whether the duties and functions of the Storekeeper are the same or different from those of the Storeroom Clerk, the fact remains that Rule 1 of the Agreement was violated when the latter position was unilaterally terminated. Particularly is this true since it has not been claimed that there was no work to be performed in the Clerk's position. The job was not abolished for lack of work for the incumbent. On the contrary, it appears that those who qualified for the position soon discovered that they could command better pay for their services elsewhere. Whether the Clerk's duties were shifted in part or wholly to the Storekeeper, or whether they were absorbed by other employees, the fact remains that the job was improperly terminated under the parties' Agreement.

We see no alternative but to sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1955.