

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

DES MOINES UNION RAILWAY COMPANY

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

1. The Carrier violated and continues to violate the provisions and intent of the rules of the Clerks' Rules Agreement by distributing the freight trucking work occurring at the freight house at Des Moines, Iowa, which is work classified as non-clerical work, to positions classified as clerical positions, specifically check clerk and chief delivery clerk, thereby having the effect of nullifying the seniority of freight trucker Tommaso A. Nucaro.

2. The Carrier shall be required to assign the non-clerical freight trucking work to a non-clerical trucker position and reinstate Trucker Nucaro to such position, compensating him for all loss suffered retroactive to December 12, 1957.

EMPLOYEES' STATEMENT OF FACTS: For years the Carrier has maintained a force at its freight house at Des Moines, Iowa which was made up of clerical and non-clerical positions and employes who were, as shown by Rule 1 of the Agreement, separated into two classes of service:

"(a) Clerks, including

Delivery and Receiving Clerks,

Assistant Foremen,

Freight and Warehouse Checkers,

Sealers,

* * * * *

in moving freight manually until the tally sheet or record book is again picked up.' "

It is the Carrier's position:

1. That it had a right, under the schedule rules, to abolish the trucker's position when the volume of LCL tonnage in the Warehouse decreased to the point where that position was no longer required.

2. That the claimant had a right to exercise seniority to displace a junior employe had he possessed sufficient fitness and ability.

3. That his lack of sufficient fitness and ability prevented him from exercising seniority in accordance with the schedule rules when his trucker's position was abolished.

4. That there is no provision, understanding or agreement which required the Carrier to retain the unnecessary trucker's position or to rearrange the remaining work assigned to the three remaining positions in such a way that there would exist a reasonable amount of work such as would fall within the limited ability of claimant Nucaro to perform.

5. That the Carrier did not distribute freight trucking work following the abolishment of the claimant's position but even though that allegation were correct and which we deny, there is no provision, rule or understanding that prohibits an employe, classified as clerk, from performing work considered other than clerical work so long as that employe devotes not less than 4 hours per day to clerical work.

6. That there is no provision, rule or understanding that requires the Carrier to assign freight trucking work exclusively to a trucker, nor is there any provision, rule or understanding which denies to the Carrier the right to have the check clerk and chief delivery clerk perform work, including trucking work, in the freight warehouse employes' seniority district, which has prevailed under the schedule rules since at least January 1, 1925.

There is no basis whatever for the claim presented in behalf of Claimant Nucaro and the Carrier respectfully requests that it be denied.

All data contained herein has been submitted to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The controversy before us relates to the abolition on December 12, 1957, of the full-time Trucker position at the Carrier's Des Moines, Iowa, Freight House. Claimant, who had almost fifteen years seniority in that position, was its incumbent at the time it was abolished and was furloughed on that date.

Immediately prior to December 12, 1957, the Carrier maintained at the Freight House, in addition to the Foreman, two Class (a) clerical positions of Check Clerk and Chief Delivery Clerk and two Class (b) non-clerical positions of Trucker and Trucker-Caller. Claimant had about fourteen years more

service with the Carrier than had the Chief Delivery Clerk but because he could not read or write English, was unable to apply for that position when it became vacant on March 4, 1957.

The Petitioner charges that on and after December 12, 1957, there still was full-time trucker work for one man and the remaining three employees divided that work between them, performing it in addition to their other duties. It is its position that the Carrier violated the controlling Agreement by abolishing the position of Trucker and distributing the freight trucking work among positions classified as clerical. In support of its position, Petitioner points to the fact that separate seniority rosters are maintained for Class (a) or clerical employees and for Class (b) employees, which later classification includes truckers.

The Carrier maintains that its business had declined and it became necessary to abolish one position, and that since Claimant was holding the lowest rated position and was unable to qualify for a higher rated position where he might exercise his seniority over a junior employee, he was placed on a furloughed status.

It is well established that, in the absence of limitations imposed by law or contract, it is the prerogative of management to abolish a position if such discontinuance is essential to a program of good management or sound economy. (See Awards 5803, 6022, 6945, 8526.) However, where obligations are imposed by collective bargaining agreements with respect to job classifications, their compensation and other incidents, the contracting parties must live and comply with these obligations unless they are changed by mutual agreement.

The difficulty with the Petitioner's position in the present situation is that it does not affirmatively appear either in the applicable Agreement or in custom or practice that the work of the Trucker position belonged exclusively to the incumbents of that position. The mere fact that Claimant may have performed Trucker duties over a long period of time does not give him the exclusive right to their performance. (See Awards 7954 and 7031.) Evidence submitted by the Carrier supports its assertion that even prior to Claimant's furlough on December 12, 1957, Class (a) employees were customarily called upon to perform trucking work at the Freight House.

The Scope Provision of the Agreement defines a Class (a) employee as one who devotes at least four hours of his working day to clerical duties, and Class (b) employees merely as all other employees. There is no provision that Class (a) employees shall not do any trucking work and no rule prohibits the performance of manual work by Class (a) employees. In view of this situation, we can not find that trucking duties exclusively belonged to Claimant. On the contrary, in our opinion the controlling Agreement contemplates that Class (a) employees may perform some trucking and manual work.

The fact that separate seniority rosters are maintained for Class (a) and Class (b) employees does lend some measure of support to the Petitioner's contentions. Yet, in our view, this circumstance is not sufficient to overcome the defect in Petitioner's position, namely, that no showing of a sharply defined job classification of trucker with exclusivity of work is established by the record.

In view of the foregoing discussion, we must deny the claim. See Awards 7167, 6140 and 2011.

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

That the parties waived hearing on this dispute;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1959.