

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.

DISPUTE.—" Shall Mr. Glen Miller, senior unassigned refrigerator inspector, be compensated at the rate of \$177.00 per month during time junior refrigerator inspector, Mr. S. Francis, was employed on position at Muscatine, Iowa, July 1st, 1933, to about August 1st, 1933?"

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

This division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Paul Samuel was called in as Referee to sit with this Division.

An agreement between the parties dated January 1, 1931, exists. Said agreement specifically sets forth the scope of the employment as to employees, working conditions, etc. Refrigerator Inspector is covered by the agreement. Traveling Perishable Freight *Solicitor* is not covered by the agreement.

For a number of years prior to the season of 1933, it had been the custom of the carrier to establish position of Perishable Freight Inspector at Muscatine, Iowa, at the rate of \$177.00 per month during vegetable shipping season. The incumbent of said position was under the direction of the Superintendent of Refrigerator Service, and came within the purview of the agreement dated January 1, 1931. That particular employment at Muscatine, Iowa, usually lasted approximately from four to seven weeks, depending upon local conditions. After the close of the season of 1932, and on or about June 25, 1933, the carrier created a new position of Traveling Perishable Freight *Solicitor* at the rate of \$215.00 per month on the pay roll of Vice President and Freight Traffic Manager, and this position was awarded to S. Francis, whose services in the previous year had been engaged in capacity of Perishable Freight Inspector at the same point. Beginning with the vegetable season in July of 1933, the conditions with reference to refrigeration were somewhat changed in that the storage of natural ice and the refrigeration of cars was transferred from Muscatine, Iowa, to Silvis, Illinois. The carrier, therefore, did not appoint any person to the position of Perishable Freight Inspector at Muscatine. The Traffic Department, however, created the new position of Traveling Perishable Freight *Solicitor*, and it is claimed by the carrier that such *Solicitor* was not under the supervision or direction of the Superintendent of Refrigeration Service but was under the direction of the Freight Traffic officer, and that when this service was no longer needed in Muscatine territory, the incumbent was sent to other points on the railway for solicitation. It is claimed by the petitioner that with the exception of changing storage of natural ice and refrigeration of cars from Muscatine to Silvis, that the duties performed by Francis were the same in 1933 as in 1932 and previous years, and that the position was relatively and substantially the same in 1933 as in 1932 and previous years, and that the title "Traveling Perishable Freight *Solicitor*" is a "misnomer", and that the title was changed by the carrier management merely for the purpose of attempting to exclude the position from the agreement between the carrier and employees, thus denying seniority rights to the petitioner and claimant Glen Miller, who had seniority rights over Francis.

If the position of Refrigerator Service Inspector or Perishable Freight Inspector had been changed to that of Traveling Perishable Freight Solicitor, and the class of work performed by the Traveling Perishable Freight Solicitor had been relatively and substantially the same, then obviously such action on the part of the carrier would be a violation of the rules or agreement existing between the carrier and employees dated January 1, 1931. On the contrary, if the position created by the carrier was that of a Solicitor of Perishable Freight and his duties were not substantially or relatively those duties as were performed by the Refrigerator Service Inspector or Perishable Freight Inspector, then the claimant, Glen Miller, has no right to be compensated.

The record in this case is very meager, and this Division is of the opinion that the burden of proof rests with the petitioner and the claimant, and that the petitioner and the claimant have failed to prove that the position of Refrigerator Inspector and Traveling Perishable Freight Solicitor are in truth and fact one and the same position.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 15th day of July 1935.