

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES
MISSOURI PACIFIC RAILROAD COMPANY**

DISPUTED.—"Claim of employees that position of 'Dock Foreman', Supply Department, Sedalia, Mo., be restored and that Mr. W. A. McVey, the original occupant, but now carried as Sub-Foreman, rate 52¢ per hour, be compensated for the difference between his present rate and \$6.39 per day, from May 15, 1932; claimed that Rule 76 of the Agreement effective August 1, 1926, has been violated; further that wage agreements September 1, 1923, August 1, 1926, and November 1, 1928, have been disregarded."

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 the said dispute were given due notice of hearing thereon.

The dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with this Division as a member thereof.

Prior to September 1, 1929, Mr. W. A. McVey was employed by the carrier as Scrap Dock Foreman at a rate of \$6.39 per day. In this capacity, he reported to the General Foreman of the Supply Department. His duties consisted of supervising men working on the Scrap Dock.

On September 1, 1929, the carrier relieved the General Foreman of his general supervision over the dock and placed Mr. McVey in entire charge under the general supervision of Mr. Harris, Superintendent of the Reclamation Plant. On March 9, 1932, the carrier suspended operations on the scrap dock, retaining there merely a skeleton force under the supervision of Mr. Harris.

On May 6, 1932, the carrier resumed operations on the scrap dock, placing the work under the supervision of the General Foreman of the Supply Department. In resuming operations, the carrier restored the three positions of sub-foreman, at the rate of 52¢ per hour, but did not restore the position of Scrap Dock Foreman which Mr. McVey had previously filled at a rate of \$6.39 per day.

When operations were resumed, Mr. McVey bid in one of the positions of sub-foreman on the scrap dock, and has continued to fill such position down to the date of the filing of this dispute with the Adjustment Board.

In support of the claim under consideration, the petitioner contended that McVey, upon being assigned to the position of sub-foreman, either at the direction of the carrier or with its knowledge and acquiescence, began immediately to perform the duties which he had formerly performed as Scrap Dock Foreman. In support of this contention, the petitioner cited and relied upon Rules 65, 68, and 76 of the Agreement between the parties, dated August 1, 1926.

"RULE 65. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

"RULE 68. The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

"RULE 76. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The petitioner also contended that the changes under consideration were in violation of wage agreements between the parties.

The carrier contended that it did not assign to McVey, as sub-foreman, the duties which he had previously performed as foreman; and that if he did at any time perform such duties, he did so on his own initiative and responsibility.

CONCLUSIONS OF THE DIVISION.—On the whole record and the evidence, the Division arrives at these conclusions:

(1) Mr. W. A. McVey, as sub-foreman, from May 15, 1932 until April 5, 1935 performed "relatively the same class of work" as that which he had previously performed as foreman. The carrier, in violation of the rules of the agreement cited by the petitioner, either directed McVey to reassume the duties of a foreman or knowingly permitted him to do so.

(2) On April 5, 1935, the carrier strictly limited Mr. McVey to the performance of the duties properly assignable to the position of a sub-foreman.

AWARD

The claim is sustained to the extent that McVey is entitled, for the period between May 15, 1932 until April 5, 1935, to the difference between what he was paid as a sub-foreman at 52¢ per hour and what he would have been paid as foreman at \$6.39 per day.

That part of the claim which asks for a restoration of the position of Dock Foreman is denied.

By Order of Third Division:

Attest:

NATIONAL RAILROAD ADJUSTMENT BOARD.

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 20th day of January 1936.