

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE.—

"Claim of Clerks J. P. Innes, C. A. Neer, V. E. Van Matre, H. C. Bundy, and J. M. Norris, Colorado Springs, Colo., for compensation for time lost on June 1, 2, 3, and 4, 1935, under Rule 61 of current schedule."

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 following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Prior to May 31st the assignment and rates of pay for clerical employees involved in the claim were:

Name	Position	Rate
J. P. Innes.....	Relief Clerk.....	According to position worked.
C. A. Neer.....	Claim Clerk-Steno.....	\$4.58.
V. E. VanMatre.....	Baggage Clerk.....	5.00.
H. C. Bundy.....	Baggage Clerk.....	4.25.
J. M. Norris.....	Bill Clerk.....	4.95.

"Agent C. A. Carter, Colorado Springs, Colo., under date of May 31, 1935, posted the following notice:

'COLORADO SPRINGS, COLO.  
'May 31, 1935.

'Mr. V. E. VAN MATRE,  
'Baggage Clerk.

'Mr. H. C. BUNDY,  
'Night Baggage Clerk.

'Mr. C. H. TRAMMELL,  
'Car Clerk.

'Mr. ROBERT CROSBIE,  
'Demurrage Clerk.

'Mr. R. A. PEARSON,  
'Check Clerk.

'Mr. J. P. INNES,  
'Relief Clerk.

'Mr. JOHN DWYER,  
'Trucker.

"The following clerical positions at Colorado Springs are cancelled, with effective date shown, until further advised:

'Baggage Clerk, June 2, 1935.

'Night Baggage Clerk, June 2, 1935.

'Car Clerk, June 2, 1935.

'Check Clerk, June 1, 1935.

'Demurrage Clerk, June 2, 1935.

'Warehouse foreman will work from 7:00 A. M. to 4:00 P. M. with one hour (12 Noon to 1:00 P. M.) for meal period. Effective June 2, 1935.

'The duties of trucker will not be required until further advised.

'Kindly be governed accordingly.

'C. A. CARTER, Agent.

'CC Mr. L. W. BOWEN.'

'The amount of the claims involved are:'

J. P. Innes (June 2 and 3) (2 days)-----	\$9.30
C. A. Neer (June 3) (1 day)-----	4.56
V. E. Van Matre (June 2 and 3) (difference in regular rate and assignment he took)-----	.89
H. C. Bundy (June 2) (1 day)-----	4.25
J. M. Norris (June 1, 3, and 4) (3 days)-----	14.85

33.84

There is in evidence an agreement between the parties bearing effective date of February 1, 1926, and the following rules thereof have been cited:

#### "RULE 10

"New positions or vacancies other than those designated in Groups 2 and 3 of Rule 1, will be promptly bulletined in designated places accessible to all employes affected for a period of eight days in the seniority district in which they occur. Bulletin to show location, title, hours of service and rate of pay.

"Employes within the district desiring such positions will file their applications with the designated official within that time. Assignment will be made within eight days thereafter and name of successful applicant will be posted for a period of five days where the position was bulletined.

"Employes of other seniority districts or of other classes will be allowed to file applications and if there are no applicants within the district or if none of such applicants have sufficient fitness or ability, such applications will be considered and appointments made from the best qualified applicant outside of the seniority district, the Management to be the judge.

"For positions coming within the scope of Group 2 of Rule 1, bulletins will be posted in accordance with this rule only at the point or in the office where such new position is created or vacancy occurs.

#### "RULE 26

"Employes whose positions are abolished will be allowed ten days from date position is abolished in which to exercise their seniority rights over junior employes in their district. Other employes affected must exercise their seniority in the same manner. Employes desiring to take leave of absence before placing themselves must give written notice within the ten day period stating the position desired. An employee on leave of absence, or absent account of sickness at the time of abolishment of their position, will be allowed ten days from the date they report to exercise their seniority over junior employes.

"Employes failing to exercise their displacement rights within the ten day period, as above, will be permitted to go on the extra list retaining seniority and be permitted to bid on newly created positions or permanent vacancies.

#### "RULE 61

"Employes covered by Groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly, or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employes covered by the rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

The petitioner contends that carrier's notice of May 31, 1935, does not constitute an abolishment of positions in fact; that the action taken is nothing,

more or less, than a reduction in days of employment; that freight and passenger depots continued operation on June 1, 2, 3, and 4, and that the principle established by the U. S. Railroad Labor Board in Decision No. 3865 and the provisions of Rule 61 govern.

The carrier contends that as a result of high water and flood conditions in the Colorado Springs District during the afternoon of May 30, it was impossible for any train to arrive or depart from the station; that the agent advised the employees in question, by notice, May 31, 1935, that their positions were cancelled effective that date, and that there is nothing in Rule 61 which prohibits the temporary cancellation of clerical assignments due to conditions over which the railroad has no control, and that the guarantee provisions of this rule prevent the carrier only from regularly assigning employees to less than six days per week.

The Division finds that receipts and deliveries at the freight house continued substantially as great as that handled prior to June, and this was, in effect, an enforced lay-off for one or more days per week, in violation of Rule 61.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 17th day of November, 1936.