

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY**

**THE CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of Mr. J. S. Little for reinstatement of rate of pay of \$139.50 per month, effective November 1st, 1936, on position of Warehouse Foreman, McAlester, Oklahoma."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"Effective November 1st, 1936, the rate of pay on position of Warehouse Foreman, McAlester, Okla., was reduced from \$139.50 per month to \$114.50 per month and the title changed from Warehouse Foreman to Check Clerk.

"On September 16th, 1936, representative of the carrier and representative of the employees' organization made a joint check of the work on the position of Warehouse Foreman at McAlester and submitted a report of their findings to the Superintendent and the General Chairman, as follows:

'Statement of facts concerning the duties now performed by the Warehouse Foreman at McAlester, Okla.

'We find the hours of service of this position are from 7:45 A. M. to 4:45 P. M., with one hour for meal period, 12 Noon to 1:00 P. M., excluding Sundays.

'The duties performed are as follows:

'Beginning at 7:45 A. M., takes seal records of loaded cars of merchandise at freight house, entering said records in seal record book. After this is concluded he delivers and receives freight to and from patrons. He then opens cars of merchandise and checks freight therefrom.

'Compiles a house check of all cars on tracks serving freight house (three tracks) to be used by switch crews in switching house tracks.

of business handled and corresponding decrease in the number of employees in the warehouse, the supervising responsibilities of the Warehouse Foreman as well as the duties which warranted the maintenance of such a position have also decreased until in 1936 they had almost entirely disappeared.

"Because the freight platform and warehouse at McAlester no longer required the supervision of a foreman, the carrier suggested an adjustment be made in the rate of pay of the Warehouse Foreman and to determine what change there had been in the duties and responsibilities of that position, a check was made by a representative of the carrier and the organization. That check, which is quoted in the joint statement of facts, conclusively shows, we feel, that the employee filling the position under the title of Warehouse Foreman at McAlester is now and has for some time been doing only the work which would ordinarily be required of a check clerk. After this check was made and certified to, the Local Chairman as well as the General Chairman of the Organization were contacted and asked to give consideration to an adjustment in the rate of the position, based on the findings of the committee. The General Chairman, as indicated in his letter of October 2, 1936, quoted in the joint statement of facts, declined to recognize that there had been any decrease in the duties and responsibilities of the Warehouse Foreman as compared with previous conditions at McAlester, and when the representatives of the organization declined to give consideration to an adjustment, we felt it entirely proper that we eliminate the few duties required of the Warehouse Foreman and have the duties of a Check Clerk existing in the freight house performed by a party classified and paid as a Check Clerk. No conference was held because the employees' representative stated that no change should be made.

"No showing of rates paid to analogous positions was made to the representative of the organization because

1. The rate formerly paid the Check Clerk at this point should control; and
2. Because the representative refused to consider any change, no such showing could be made or would have served any purpose.

"The carrier does not feel it has violated the provisions of the clerical schedule in any way. We are not now and have not required the present Check Clerk to assume any duties which are not those universally recognized as constituting the work of a Check Clerk; the Check Clerk is not responsible for the operation of the warehouse in any way nor does he assume any more responsibility for the work of the stowman and the trucker than is assumed by check clerks at other freight stations. Every consideration contemplated by the provisions of the contract was given before definite action was taken in the matter, but upon the arbitrary refusal of the organization's representatives to give any consideration to an adjustment in the rate of pay of the Warehouse Foreman, it was decided to eliminate that position. There is no provision in the clerical contract requiring that a position once established must be maintained forever regardless of circumstances or conditions, but there is a provision that decreased responsibilities and duties will warrant an adjustment in rate, and the contract did not contemplate that a refusal to recognize and give consideration to the facts by one party would bind the other party to continue a position which it can and has been clearly shown consists of work which has been recognized as being that to be performed by an employee in a non-supervisory capacity and at a lesser rate of pay.

"The claim of the employees that the position of Warehouse Foreman should be reinstated is not supported by the facts nor is it required under the contract, and should be declined."

OPINION OF BOARD: The complainant party contends that the provisions of Rule 66 were not complied with when the carrier arbitrarily reduced the rate of pay of the position in question, effective November 1, 1936; that

while a joint check of the duties was made by representatives of the parties hereto, such action did not constitute negotiations "with the committee" for a reclassification of the position as contemplated in the rule; that the carrier is fully aware of the proper application of Rule 66, and has so demonstrated on many occasions by making adjustments in rates of pay on other positions in the proper manner.

It is also contended that a liberal estimate of time required to perform the duties that were removed from the position in question would not exceed thirty (30) minutes per day, which duties consisted of compiling of merchandise loading sheet, pouching of waybills and recording information in connection with O.S.&D.'s; that such minor change did not constitute a "substantial decrease in the duties and responsibilities" of the position of Warehouse Foreman, and that the rate of pay was not "adjusted, with the committee," both of which conditions must obtain before rates of pay can be changed, under the provisions of Rule 66; and, further, that Rule 69 was violated.

The carrier contends that \$114.50 is the negotiated rate of pay for a Check Clerk in the freight house at McAlester, Oklahoma, and that such a position was discontinued there in 1931; that \$139.50 is the negotiated rate for a Warehouse Foreman at that point, which position was maintained for several years until the necessity therefor ceased in the latter part of 1936, due to a gradual but steady decrease in the amount of l.c.l. business handled, which at the time the position in question was discontinued, varied from ten to twenty tons per day.

In the Joint Statement of Facts it is shown that effective November 1, 1936, the rate of pay on position of Warehouse Foreman at McAlester was reduced from \$139.50 to \$114.50 per month and the title changed from Warehouse Foreman to Check Clerk.

This unilateral action upon the part of the carrier followed negotiations that were being conducted, but which had not been concluded, which were precipitated by the rate previously having been reduced arbitrarily, in August, 1936, without agreement between the parties, and later restored upon complaint of the employees, so that the former rate, viz., \$139.50, was in effect on October 31, 1936.

Rule 66 provides (a), that positions shall be rated and the transfer of rates from one position to another shall not be permitted; (b) that established rates of pay shall not be reduced, except where there has been a substantial decrease in the duties and responsibilities of a position, and (c) that when a change in the rate of pay is made under this rule it must be adjusted with the committee.

In this case the rate of Check Clerk was transferred to the position of Warehouse Foreman by unilateral action of the carrier, the former rate being \$114.50 per month and the latter \$139.50 per month, and this was done while the subject was still under negotiation.

The carrier admits that, "No conference was held because the employees' representative stated that no change should be made." The carrier violated Rule 66 by changing the rate of pay of the position in question, effective November 1, 1936, without such adjustment having been made with the committee. To hold otherwise would have the effect of removing definite language from the rule.

Further, Rule 69, among other things, provides that established positions will not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules. The Joint Statement of Facts shows that the title of the position in question was changed and the rate of pay reduced, although the record shows that the kind and class of work remained at least in part the same after the change, November 1, 1936.

The evidence indicates that there was the position of Receiving Clerk paying rate of \$123.00 per month and that the employe still continued to perform duties of that classification. In such circumstances it is inconceivable that a lower rate than that applicable to this position would have been agreed upon had negotiations been conducted in good faith compliance with the rule. This Board is not in a position to determine what the adjustment in pay should have been and accordingly remands the matter for conference between the parties looking to such adjustment retroactively to the date of change upon a basis not less than that applicable to a Receiving Clerk. Failing agreement, if circumstances warrant a claim to a higher rating than that, the petitioners should be privileged to return to the Board with evidence to support any claim for such higher rating.

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 employe involved in this dispute are respectively carrier and employe 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 Rules 66 and 69 of the agreement were violated by the carrier in the arbitrary reduction in the pay of the employe from \$139.50 to \$114.50 per month effective November 1st, 1936; that the parties should confer as contemplated by the rules with a view to an appropriate adjustment of pay retroactive to that date as indicated in the opinion.

AWARD

Claim sustained to the extent indicated by opinion; and case remanded for adjustment in conformity.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 24th day of March, 1938.