Award No. 607
Docket No. CL-603

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 AND PACIFIC RAILWAY COMPANY

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

STATEMENT OF CLAIM: "Claim for reinstatement, effective April 3rd, 1936, of position of Chief Claim Clerk, rate $147.00 per month, Oklahoma City freight office, and compensation of E. L. Earhardt and all other employes affected for monetary loss sustained as result of discontinuing position of Chief Claim Clerk effective April 3rd, 1936."

EMPLOYES' STATEMENT OF FACTS: "Effective April 3rd, 1936, position of Chief Claim Clerk, rate $147.00 per month, Oklahoma City freight office, was discontinued and the work formerly handled by this position was distributed throughout the office to several other employes as well as part of the duties assigned to Western Weighing & Inspection Bureau employe, not covered by the working rules agreement effective January 1st, 1931, between the carrier and the Clerks' organization. This reduction in force and redistribution of work was put into effect by the carrier without conference with the employes' representatives. Rule 69 of Agreement of January 1st, 1931, between the disputant parties reads as follows:

'RULE 69. ADJUSTMENT OF RATES.

'When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted, but 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 these rules.'

Joint agreement of interpretation dated June 21st, 1933, of the proper application of Rule 69 reads as follows:

'It is mutually agreed that where there are two or more positions having the same hours of assignment, with the same classification and rates of pay, and a position of that classification is to be abolished, it shall be the one held by the junior employe, but where the duties of a particular position are discontinued or so decreased in volume that the remaining duties must be reassigned, the right of the carrier to abolish such position is unquestioned. Where remaining duties are reassigned

character which would require any consideration being given to an adjustment in the rate of pay, because there was no increase in the duties and responsibilities of the positions named in assuming work which properly belonged to a lower rated position.

"None of the rules cited by the employes was violated in the case either of the claim originally presented or of the claim now presented, because there has not been sufficient increase or decrease in the duties and responsibilities of any position or a sufficient change in the character of work to warrant consideration being given to an increase in the rates of the three positions named, nor is there any reason for reestablishing the position of Chief Claim Clerk."

OPINION OF BOARD: The position of the Carrier that this is not the same claim as that progressed before the Management is not well taken. There is such another claim as that described by the Carrier, the subject of another docket (CL-641) but the instant claim was originated by the General Chairman with the Superintendent under date of April 15th, 1936.

The preponderance of evidence in this case shows that when the position of Chief Claim Clerk, rate $147.00 per month, was discontinued effective April 3, 1936, there was a full eight hours of work per day attaching to the position. Following its discontinuance, from three to four hours per day of the work of this position was assigned to an employe of the Western Weighing and Inspection Bureau, a person not covered by the current agreement. The remaining duties were distributed or reassigned to other employes in the freight house, without conference with the employes or their representative, as provided for in Joint Interpretation to Rule 69 of June 21, 1933.

When the Carrier discontinued an established position, with an established rate of pay, on which there was approximately eight hours of work, it violated Rules 66 and 69. In reassigning this work to other positions, without conference, the carrier violated the Joint Interpretation to Rule 69 of June 21, 1933. Further, when the carrier removed the claim work from the current agreement, by assigning it to persons not within the scope thereof, it violated the scope, seniority and other rules thereof.

This is one of a series of cases arising during a portion of 1936 from which the conclusion is hardly escapable that the Carrier, in an effort to economize, deliberately concluded to disregard the joint interpretation of Rule 69 requiring conference concerning the reassignment of work upon the abolition of a position. The instant case affords an excellent illustration of the necessity of such conference at the time abolition is contemplated—which at least would develop the facts—for the parties were unable to develop the actual facts of what did occur in this case until even after the hearing in this docket.

Apart from this, there is no authority whatever under the agreement itself for the discontinuance of a position having full eight hours of duties and reassignment of such duties to others. Such a practice would completely nullify the wage agreements. There is a later agreed understanding between the organization and the management which would permit this being done provided the lowest rated position was chosen for abolishment but in this case not even that plan was followed.

In the situation the Board can afford no remedy but to restore the status quo ante with reparation to those sustaining wage loss. If there is justification for the abolition of a position, the Carrier should then handle it in conformity with the rules. While the Carrier has the undoubted power to abolish any position, under the agreement it has an unlimited right to do so only if the duties have completely disappeared; and it has the limited right to do so where the duties have so decreased in volume that the remaining duties must be reassigned provided it confers concurrently respecting such reassignment; although the conference may not result in agreement, the Carrier would still be entitled to abolish the position and would be liable then only to claim for wage readjustment of the positions to which the remaining work had been assigned and the facts would all be available to determine such claim. The joint interpretation could have no meaning at all but this.

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 employes involved in this dispute are respectively carrier and employes 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 Carrier violated the current agreement and Joint Interpretation as set forth in above opinion.

AWARD

Claim sustained for restoration of position and reparation for wage losses to affected employes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1938.