

**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 October 1st, 1936, of position of Second Assistant Car Clerk, rate \$127.00 per month, and position of Third Assistant Car Clerk, rate \$124.50 per month, Oklahoma City freight office, and compensation of all employees affected for monetary loss sustained as result of discontinuing these two positions effective October 1st, 1936."

EMPLOYEES' STATEMENT OF FACTS: "Effective October 1st, 1936, position of Assistant Car Clerk, rate \$127.00 per month, and position of Third Assistant Car Clerk, rate \$124.50 per month, Oklahoma City freight office, were discontinued and the work formerly handled by these positions was re-assigned, part of it to clerks in the freight office, part of it to clerks in the yard office and part of it to telegraph operators in the yard office. The telegraph operators in the yard office are not covered by the working rules agreement effective January 1st, 1931, between the carrier and the Clerks' Organization. This reduction in force and re-distribution of work was put into effect by the carrier without conference with the employees' 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 employee, but where the duties of a

month position performing the duties formerly handled by the second shift assistant car clerk (rate \$127.00) effective October 1, 1936, the date this work was assigned to the yard clerk, the rate of that position was increased from \$124.00 to \$127.00 per month.

"The third shift Assistant Car Clerk, salary \$124.50, was assigned from midnight to 8 A. M. and performed generally the work recognized as that of a car clerk. When the third shift Assistant Car Clerk position was discontinued, part of the work of that position was assigned to the Chief Car Clerk, salary \$139.50 per month, working 8 A. M. to 5 P. M. and the remainder of the work of the discontinued position was assigned to the third trick yard clerk working midnight to 8 A. M. in the East yard, salary \$124.50 per month, the same as that of the discontinued third shift Assistant Car Clerk.

"Prior to October 1, 1936, a terminal or index record book, form 483, was maintained in the freight office by the various Assistant Car Clerks. This work consisted of maintaining a record of cars moving into and out of the station. At the time these Assistant Car Clerk positions were discontinued, the compilation of form 483 index book was discontinued at the freight office and thereafter maintained in the yard office by telegraph operators.

"None of the work formerly handled by the second and third trick Assistant Car Clerks was transferred to positions carrying a lower rate of pay, and, consequently, there can be no proper contention made that the duties and responsibilities of any of the positions in question were increased other than the second trick yard clerk, and that rate was adjusted to that of the discontinued second shift Assistant Car Clerk position.

"The assignment of work of compiling form 483 index record to telegraph operators was in accord with the accepted practice in effect on this property. There has been no disagreement with our clerical employees with respect to assigning clerical work to telegraph employees. Such changes have been made in many cases where both clerical and telegraph work has been necessary, and where there has been only a sufficient volume of work to warrant the maintenance of one position at a station and in many other cases where there are two or more positions at a station, employees classed and paid as telegraph operators and agents have performed all necessary clerical work at such stations.

"There being no operating necessity for re-establishing these two positions and the work formerly handled by these positions having been distributed to other positions in accord with the intent of the clerical schedule, i. e., to higher or same rated positions, the employees' contention that the contract has been violated is not substantiated, and the claim should be declined. There is no contract obligation requiring the carrier to continue positions not needed."

OPINION OF BOARD: This is another of the series of cases referred to in Award Number 607.

The evidence in this case indicates clearly that the carrier violated the principle of Rule 69 when it discontinued the positions of Second and Third Assistant Car Clerks, Oklahoma City Freight Office, and assigned the work to other employees; that the carrier violated Joint Interpretation to Rule 69 when it re-assigned the duties of the positions in question to other positions, without conference with the petitioner; and that the carrier violated the scope and seniority rules of the agreement when it assigned some of the duties formerly attaching to the positions in question to yardmasters and section laborers, which employees are not covered by the current agreement.

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 employees involved in this dispute are respectively carrier and employees 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 Scope Rule 1, the seniority rules, Rule 69 and Joint Interpretation thereto, of the current agreement between the parties.

AWARD

Claim sustained for wage losses to affected employees.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 609,
DOCKET No. CL-605**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship
Clerks, Freight Handlers, Express and Station Employees

NAME OF CARRIER: The Chicago, Rock Island and Pacific Railway
Company

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Interpretation of the Award being asked in respect to that portion of the claim relating to reinstatement of the positions, the Division finds it to be the intention of the Award that the claim for restoration of the positions is included.

Referee Frank M. Swacker, who sat with the Division, as a member, when Award No. 609 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1938.