

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

STATEMENT OF CLAIM: "Claim of System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; (1) that the carrier violated the Clerks' Working Agreement dated September 8th, 1933, when on May 17th, 1937, it abolished two positions classified as Assistant Mail Foreman, rate \$3.76 per eight (8) hour day and removed the duties and responsibilities constituting the substance of said positions out from under the scope and operation of said agreement; and (2) claim for restoration of the two positions of Assistant Mail Foreman, including restoration of regular assigned incumbents to said positions and re-imbursement of all wage losses suffered by all employees affected by said violation of the Agreement."

EMPLOYEES' STATEMENT OF FACTS: "Prior to May 17th, 1937, there was established and maintained at Texarkana Union Station, Texarkana, Ark.-Tex., one position of Mail Foreman at rate of \$3.91 per day and two positions of Assistant Mail Foreman at rate of \$3.76 per eight hour day. The position of Mail Foreman worked eight (8) hours per day the same as the two positions of Assistant Mail Foreman. The position of Mail Foreman was an excepted position under the provisions of 'Exceptions' to Rule 1 of the agreement.

"On May 17th, 1937, the carrier abolished the two regular established positions of Assistant Mail Foreman at rate of \$3.76 per day. In lieu of the position of Mail Foreman and the two positions of Assistant Mail Foreman, who previously worked only eight (8) hours per day, the carrier created position of Day Mail Foreman and position of Night Mail Foreman.

"The hours which have been worked by the Day Mail Foreman are from 10:30 A. M. to 10:30 P. M. The hours which have been worked by the Night Mail Foreman are from 10:30 P. M. to 7:30 A. M. and longer if trains were not on time.

"The substance of the duties of the two positions of Assistant Mail Foreman were:

1. Immediate supervision of Mail handlers who were on duty during their tour of duty;
2. Were vested with authority to increase or decrease force of mail handlers during their tour of duty and keep record of time worked by each mail handler;
3. Keep a record of the number of feet of mail handled;

A. M., and the baggage agent is on duty at this time. The assistant foreman's assigned hours are 10:30 P. M. to 7:30 A. M., with one hour off for lunch. The foreman, who has no regular assigned hours, usually comes down shortly after lunch, or about 12:30 P. M., and remains until relieved by the night foreman at 10:30 P. M.

"Exhibit A' attached, is copy of Mr. Tobin's letter to General Chairman McDonald, of November 18, 1937, following the conference of November 17th. Mr. Tobin represented the undersigned at the conference above referred to.

"All data submitted in support of the Carrier's position has been presented to the employees' representative."

There is in existence an agreement between the parties bearing effective date of September 8, 1933.

OPINION OF BOARD: Two positions of Assistant Mail Foreman subject to the terms of the agreement between the parties were abolished on May 17, 1937, coincident with which the Carrier established one position of Mail Foreman, designated Night Mail Foreman, in addition to the then existing position of Mail Foreman, which latter position thereupon was designated Day Mail Foreman, both positions being considered by the carrier as not covered by the agreement.

Effective November 18, 1937, the second position of Mail Foreman (Night Mail Foreman) was discontinued, the carrier then acknowledging that the agreement provided for but one Mail Foreman to be excepted. Thereupon the position of Assistant Mail Foreman, with assigned hours 10:30 P. M. to 7:30 A. M., one hour for lunch, was re-established under the provisions of the agreement.

Throughout the period of the violation, the Night Mail Foreman, in lieu of an assignment of 8 hours within a spread of 9 hours as established for the restored position of Assistant Mail Foreman, had performed service in practically all cases for 8½ hours within a spread of 9½ hours, and in some instances exceeded 8½ hours due to occasional late trains. He was therefore entitled to extra compensation for services performed in excess of 8 hours per day during the period, May 17, 1937 to November 17, 1937, inclusive.

With respect to request for restoration of the other position of Assistant Mail Foreman (hours 7:00 A. M. to 4:00 P. M.), the Board finds that in the circumstances of this case the carrier was within its right in discontinuing that position. Evidence of record shows that during the hours 6:30 A. M. to 12:45 P. M. but one passenger train arrives and/or departs from the station daily, same arriving at 10:45 A. M., at which time the baggage agent is on duty. Evidence further shows that not to exceed one or two mail and baggage handlers, whom this Assistant Mail Foreman could supervise, are on duty between 7:00 A. M. and 12:45 P. M. Obviously, in these circumstances, the carrier should not be required to maintain position of Assistant Foreman during that period if it considers such position unnecessary. The Mail Foreman (an excepted position), who has no regular assigned hours, performs such supervisory duties as are necessary, usually from 12:30 P. M. to 10:30 P. M., at which time he is relieved by the Assistant Mail Foreman.

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 occupant of the position of Assistant Mail Foreman shall be compensated at overtime rates for time worked in excess of 8 hours (exclusive of meal period) each day during the period May 17, 1937 to November 17, 1937 inclusive.

AWARD

Claim sustained to the extent indicated by Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 27th day of May, 1938.