

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood, that—

"(a) The Carrier violated and continues to violate wage and working agreements when it fails and refuses to maintain classification of 'Stock Foreman' and rate of pay of \$160.00 per month on the position occupied by J. L. Davis, Store Department, Minden, La., and

"(b) That said classification and rate shall now be established on said position and said J. L. Davis be reimbursed for wage losses suffered as a result of Carrier's action."

EMPLOYEES' STATEMENT OF FACTS: "Effective April 1, 1929 the two parties to this dispute entered into a wage agreement providing for classification and rate of pay on each position recorded therein, as per copy attached hereto and made a part hereof. As will be noted, said wage agreement established the classification of 'Stock Foreman' and rate of \$160.00 per month at the Minden, La. Store.

"The duties and responsibilities which constituted the substance of said position and governed the classification and rate as recorded in said April 1, 1929 wage agreement were as follows:

Supervise and be responsible for receipt and issuance of materials and supplies;

Labeling and placing of materials in shelves, racks or bins;

Maintaining stock record of materials received and issued;

Preparation of inventory records and records of materials to be ordered, and

Supervision of employees assigned to assist in the physical handling of materials.

"Mr. J. L. Davis was the regular occupant of said position when it was classified and rated in said wage agreement. He has since April 1, 1929 continued to perform and be responsible for all such work as hereinbefore described and stipulated.

"On or about October 1, 1930, the Carrier, without notice to or conference with Organization, arbitrarily changed said classification of 'Stock Foreman' to that of 'Stockman' and changed said rate of \$160.00 per

for Store Foreman or Stock Foreman when there was no force to supervise. The work assigned to the re-arranged positions, was strictly of a routine nature and rates were and are commensurate with duties to be performed.

"It is the duty of the Management to meet existing conditions and operate the property as economically as possible, re-arranging the duties when the work is reduced and that when duties and responsibilities are changed rates should also be changed, so long as they are commensurate with the work done, requirements of the position, duties, responsibilities, etc.

"It is also carrier's position that when the entire force and work are reduced to such an extent that the duties are changed, when in fact a complete new set-up is made, the duties and rates properly assigned, positions advertised and bid in by employees of their own free will and accord and no protest filed for a period of six years, that it is not within the meaning or intent of the Railway Labor Act to go back, nor is the Organization on good grounds in attempting to require the restoration of rates of pay wherein the duties of the positions are reduced, as well as the amount of work, and at the same time admit that the claim is made as a penalty for not consulting with the Chairman at the time changes were made, when the Chairman at that time, and the present Chairman, waited approximately six years to raise any question about such changes.

"The Chairman of the Organization, who was not the Chairman at that time, nor for sometime later, decided, after waiting six years and he should have been consulted at the time, has admitted that if he had been consulted, no doubt he would have agreed to the changes as made, yet in face of this admission he is attempting to penalize Carrier in the claims.

"It is Carrier's opinion that these changes were made in the proper manner and that it cannot be contended that when a position is once established that it can not be changed or discontinued.

"Reserving all its rights, both before this Board or in the courts, Carrier respectfully submits and requests that the Board deny jurisdiction. If jurisdiction is assumed the claims should be denied in their entirety."

There is in evidence an agreement between the parties bearing effective date of August 1, 1929.

OPINION OF BOARD: In 1929 the Louisiana & Arkansas Railway and Louisiana Railway & Navigation Company were consolidated into one operating property. A consolidated Stores Department was established at Minden, La. Among the positions in the consolidated department, admittedly falling within the scope of the agreement here involved, was that of Stock Foreman at a rate of \$160 per month.

The petitioner alleges that the position of stock foreman, held by claimant Davis, was reclassified as stockman about October, 1930, and a daily rate of \$4.52 established for the latter position. The carrier asserts Davis was displaced as stock foreman by the incumbent of the chief clerk position, when that job was abolished, and the former stockman's rate of \$3.20 was increased to \$4.52 because of some duties added at the time Davis went on the job.

This situation continued until in December, 1931, or January, 1932, when the Stores Department force was re-organized; all positions subject to the agreement were declared abolished and new positions created and advertised by bulletin; among others, that of stockman at a rate of \$4.07 per day, which was applied for and awarded to claimant J. L. Davis, who had formerly occupied the position of stock foreman.

On December 1, 1937, the General Chairman, on Davis' behalf, requested the Storekeeper to "correct classification and rate of pay position"

of stockman on the grounds that, although the title and rate of pay had been changed "the work performed was of the same class as that on former position," citing Rule 67. The case, therefore, turns on the question whether the stockman is performing "the same class of work" formerly performed by the stock foreman.

Both parties submitted extensive data and argument in support of their respective positions, none of it sufficiently conclusive to enable the Board to determine the issue. It is one that should be susceptible of determination by the parties themselves on the property and, in the judgment of the Board, should be remanded to afford them that opportunity. If either party requests a joint check or investigation of the facts for that purpose, such procedure should be followed.

If it is found that claimant Davis, as stockman, is performing "the same class of work" formerly performed by the stock foreman, then, under the circumstances of this particular case, the stock foreman rate of \$160 per month should be applied as of December 1, 1937 (subject to subsequent agreed upon wage adjustments, if any) and incumbents of the position since that date reimbursed the difference in earnings on that basis.

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 this case should be remanded to the parties for a determination of the facts and adjustment of the dispute, as indicated in the Opinion, with privilege of resubmission by either party if they are unable to dispose of it.

AWARD

Remanded to the parties in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of October, 1939.