

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, 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 of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railway in behalf of Mr. M. D. Miller (and all others sustaining monetary loss) for pay at rate of freight house trucker, rate 50 cents per hour, account position of trucker being cut off, effective May 20th, 1938, at Newton, Ia., in violation of the provisions of Rules 1, 46, and 64."

EMPLOYEES' STATEMENT OF FACTS: "Effective May 20th, 1938, position of trucker, Newton, Ia., rate 50 cents per hour, held by M. D. Miller, was discontinued and a part-time position under the title of 'janitor,' rate \$25.00 a month, was retained. This part-time position was assigned to perform part of the duties and work formerly assigned to truckers at Newton."

CARRIER'S STATEMENT OF FACTS: "A part-time position of janitor was re-established at Newton, Iowa, effective May 1, 1937, rate \$25.00 per month, and that position is still in existence. The holder of this position is required to work approximately 3 hours each day in the week.

"Rule 1 (a), Exceptions, of the clerical agreement of January 1, 1931, now in effect, reads:

"These rules shall not apply to individuals where amounts of less than thirty dollars (\$30.00) per month are paid for special service which takes only a portion of their time from outside employment or business;"

POSITION OF EMPLOYEES: "Agreement effective January 1st, 1931, contains the following rules:

'RULE 1. SCOPE. These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

* * * * *

'(2)

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"The claim of the employees in this case must be denied because it is contrary to the provisions of the clerical agreement."

OPINION OF BOARD: This claim is submitted on behalf of M. D. Miller (and all others sustaining monetary loss) because of the abolition of his position of trucker on May 20, 1938. In support of the claim primary reliance is placed upon the fact that a part-time janitor's position, at \$25.00 per month, was retained at the time of the abolition of the trucker's position, the contention being that the janitor duties embraced by the part-time position had at times been performed by truckers and hence could not properly be assigned to employees not covered by the scope of the Agreement. It is to be noted, however, that the claim is not based upon the improper assignment of janitor duties, nor is redress sought in terms of asserting jurisdiction over the part-time janitor's position. In these circumstances, it is unnecessary to determine in this proceeding whether or not, under the exceptions contained in Rule 1 (a), the rules of the Agreement are applicable to this part-time janitor's position carrying a monthly compensation of less than \$30.00.

This claim, as already indicated, is predicated upon the impropriety of the abolition of the trucker's position on May 20, 1938, and the reparation sought is "for pay at rate of freight house trucker, rate 50 cents per hour, account position of trucker being cut off, effective May 20th, 1938" Now the uncontradicted evidence of record clearly establishes that this position was cut off on May 20, 1938 because of a strike in the plant of one of the carrier's important shippers; that on August 5, 1938, when the strike was settled, the trucker's position was reestablished; that the abolition of the position was in no way related to the existence of the part-time janitor's position; that the janitor duties were being performed by the present incumbent of the part-time position at the time of the abolition of the trucker's position and had been so performed since May 1, 1937; and that, upon abolition of M. D. Miller's position of trucker on May 20, 1938, no duties of that position were turned over to the part-time janitor's position. Under these circumstances, whatever merit may attach to a claim that the carrier is without authority under the Agreement to set up a part-time janitor's position (no such claim being before the Board), the evidence of record discloses no violation of any rule of the Agreement in resorting to the outright abolition of the trucker's position here involved.

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 evidence of record does not disclose any violation of the Agreement in abolishing the trucker's position here involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.