

Award No. 1213
Docket No. CL-1200

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Harris L. Danner, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The Carrier has violated the rules of the Clerks Agreement and interpretations thereof when it fails and refuses to restore Clerk J. R. Ingram to position of Receiving Foreman in the General Store at Marshall, Texas.

(2) Clerk J. R. Ingram should be reinstated to his former position of Receiving Foreman and be compensated for any monetary losses he may have sustained."

EMPLOYEES' STATEMENT OF FACTS: "On February 8, 1938, General Storekeeper, Howard Crouse, advertised by bulletin, temporary vacancy in position of Sectional Stockman, General Store, Marshall, Texas, account regular assigned occupant, E. M. Robertson being granted leave of absence account of illness. Bulletin referred to above reads as follows:

'Marshall, Texas. February 8, 1938.

BULLETIN

To All Concerned:

Effective this date applications will be accepted for temporary position of Sectional Stockman at Marshall Store, rate \$6.32 per day, six days per week.

Employees assigned must be thoroughly familiar with, and qualified to maintain stock of all locomotive castings, forgings, springs, and steel bars, plates, shapes, etc.

All employees having necessary qualifications may prepare and submit applications at once. Bids will be received up to and including February 12, 1938, at 4:00 P. M. The assignment will be effective February 16, 1938.

(Signed) Howard Crouse,
General Storekeeper.'

Local Storekeeper, F. G. Gunter, at Longview, Texas, holding seniority in this department as of August 16, 1923, made application for and was assigned to the position of Sectional Stockman as per above bulletin. The assignment of Mr. Gunter created a temporary vacancy in the position of Local

"This would have made no difference so far as the status of Ingram is concerned as had that change not occurred the claimant, Ingram, with a seniority date of January 19, 1937, would have been displaced in reduction of force when the position of Storekeeper at Mineola was abolished.

"The seniority dates of the four men involved are:

Gunter, August 16, 1923
Wood, September 16, 1926
Arnold, June 30, 1930
Ingram, January 19, 1937

"Therefore, had no change been made prior to the reduction in force account abolishing the position as Storekeeper at Mineola, Wood remaining on that position until April 23, 1938, when same was abolished, he would have displaced the claimant, Ingram, or someone who, in turn, in the exercise of seniority, would have done so.

"It is affirmed that all data submitted herein in support of our position has heretofore been presented to the Organization and is hereby made a part of the question in dispute.

"Management desires opportunity to have representative present at the hearing."

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

OPINION OF BOARD: There is little dispute as to the facts in this case.

In February 1938 the regular incumbent in the position of sectional stock man in the general store at Marshall was given a leave of absence. F. G. Gunter, local storekeeper, also known as storekeeper at Longview, Texas was assigned to fill the vacancy of sectional stockman in the general store at Marshall. Storekeeper Wood, stationed at Mineola, was assigned to the position of storekeeper at Longview, instead of Gunter. The vacancy thus caused by the promotion of the storekeeper at Mineola, was filled by Clifford Arnold who had been occupying the position of store helper at Ft. Worth. The position of storekeeper at Mineola, which had been filled by Arnold, was abolished on April 23, 1938. It is understood that the vacancy at Marshall which was filled by Mr. Gunter was temporary and was so bulletined, and bid in by Mr. Gunter.

One of the questions to determine is whether or not the position of storekeeper comes under the rules of the current agreement. From the record, arguments and statements we conclude that the duties attaching to the position, define the classification rather than the title given to the position. It is clear that storekeeper performed in fact many clerical duties, and it is our opinion that the duties performed by the storekeeper makes them clerks insofar as the rules apply.

The positions of sectional stock man and receiving foreman at Marshall are both within the terms of the agreement, so that all the employees involved herein are covered by the terms of the agreement.

Another question is—whether or not, when the position of storekeeper was abolished at Mineola, whether Arnold should have been returned to his position as store helper at Ft. Worth, or should he have been permitted displacement rights under Rule 18, as contended for by the Carrier.

Bearing in mind that the position of sectional stockman at Marshall was only temporary and was so bulletined, then it is reasonable to say that all the other assignments were of a temporary nature. The latter part of Rule 24 of the agreement reads as follows:

"Any employe returning to service after leave of absence may exercise seniority rights on any position bulletined during their absence. Employes thereby displaced may exercise their seniority in the same manner."

It is our opinion that these rules are applicable to the facts here; that these changes were of temporary nature; that under these rules Robertson should either be returned to his regular position of sectional stockman at Marshall or be permitted to take any position bulletined during his temporary absence, and that under the same rule Gunter may do the same.

Wood, the regular storekeeper whose position at Mineola was abolished and Arnold, regular storehelper at Ft. Worth, have only the same rights as the other employes under Rule 24; they can return to regular positions or bid in any vacancies occurring while they were occupying the temporary assignments. Arnold's regular position was not abolished and this did not give him displacement rights because it was not the abolishment of his regular position which brought about the reduction of the force.

It is the opinion of the Board that a fair interpretation of the rules justifies this conclusion.

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 Rule 24 is applicable and should be applied in this case.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1940.