

Award No. 1315

Docket No. CL-1349

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

James H. Wolfe, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that the carrier has and is continuing to violate the terms and provisions of wage and rules agreement by failing and refusing to pay employes in accordance with agreed to rates of pay. Also claim for all wage losses sustained as a result thereof."

There is in evidence an agreement between the parties bearing effective date of January 1, 1936.

EMPLOYEES' STATEMENT OF FACTS: "Mr. William E. Wegman is classified as a sorter in the Auditor Passenger and Station Accounts Office on Position No. 107-14, at rate of \$2.65 per day. He was assigned to this position on July 13, 1938 and his entire time is spent in the destruction of old records and the reclaiming of binders and covers. This work involves the use of a hammer approximately 3½ lbs. in weight, a short piece of pipe and a bolt clipper. The process employed is to place piece of pipe over the head of the steel book binder bolt and washer (4 bolt heads and washers to a book) and with the use of the hammer drive the washer sufficiently below the bolt head to permit a grip with the bolt clipper to cut off the head, thereby separating the book covers from the book for reclamation purposes. Following this the employe is required to pull and remove from the bolt stubs the loose sheets and throw them into a bag which is suspended in an open position on a two wheel truck. When the bag is filled it is sewed up and trucked to a designated spot for further accumulation of bags. They are again handled to a motor truck being loaded thereon and transported away. Another class of record destruction performed by Mr. Wegman involves the taking out of boxes and cartons old records and dumping same into bags with the usual sewing, trucking and handling following. All bags after being filled and sewed up are trucked by Mr. Wegman to the scales and weighed by him before thrown or placed for accumulation and awaiting call of motor truck. All of this detailed routine of work constitute his duties regularly. Bulletin No. 246, dated July 11, 1938, under which position 107-14 was awarded to Mr. Wegman on July 13, 1938, describes duties as 'sorting and filing records.'"

POSITION OF EMPLOYES: "There is in effect an agreement between the parties bearing the effective date of January 1st, 1936 and the following rules thereof read as follows.

'RULE 1—EMPLOYEES AFFECTED. These rules, effective January 1, 1936, will govern the hours of service and working conditions of the following classes of employes on the Chicago and North Western Railway:

OPINION OF BOARD: This award is of narrow application. The question presented is whether Wm. E. Wegman, holding Position 107-14 (formerly Position 256-14) in the Auditor Passenger and Station Accounts' office entitled sorter calling for a rate of \$2.65 per day, should have been, since July 10, 1938 (the day he was assigned to said position) rated as a laborer, carrying a rate of 46¢ per hour.

Unwanted records to be disposed of as far as this case is concerned fall into two classes. Those between metal binders and those not so retained. The first step in the process of disposition of the first class and reclamation of metal binders involves the use of a three and one-half pound hammer and pipe to separate the bolt head from the washer sufficiently to permit the insertion of a bolt clipper in order to cut off the bolt head and thus release the pages from the binder. There are four bolt heads and washers to every book. The employe then removed the bolt shanks and loose sheets and threw them in a bag suspended in an open position on a two wheel truck. When the bag was filled it was sewed up and trucked to a designated spot for further accumulation of bags. The accumulated bags from that point are loaded onto a motor truck and transported away. The record does not show whether Wegman performed or assisted in this last operation of loading and transporting. The other task of disposition consists in taking out of boxes and cartons old records and dumping the same into bags with the usual sewing, trucking and transporting. All full bags are trucked to the scales by Wegman and weighed before they are placed on the accumulation pile awaiting the call of the motor truck.

The facts in some regard are in dispute. The employes maintain that Wegman spent his entire time in the destruction of old records and reclaiming binders. The carrier gives figures showing the binders reclaimed each month from July 1938 through August 1940. During seven of these months none were reclaimed. During the remaining months the number ranged from a low of 24 to a high of 1,582. The employes produce a joint statement in which it was stated "He (Wegman) was assigned to this position on July 13, 1938 and his entire time is spent in destruction of old records and in reclaiming of binders and covers, etc." (Emphasis added.) As we view the matter, resolution of the fact whether Wegman was using his entire or only part of his time disposing of old records is only remotely material. The joint statement bears no date. The statement was probably made when the reclamation of binders was running heavy—from July to October, 1938, both inclusive—during which time Wegman's entire time may have been spent in destroying records. But, as we view this work, disposal of records was but an incidental operation to the sorting of records. Certainly, in separating those which were to be destroyed from boxes and cartons from those which were to be left, the operation must continue into the field of disposing of the ones not to be left. Sorting, as meant by this position, did not include the exercise of judgment as to what was and was not to be left. Such information came from a higher source. The operation was therefore almost altogether totally manual labor. Much of it was of a lighter type. Certainly most jobs, even those taking in the highest amount of brain work, are attended with some manual function. Likewise, the reclamation of binders seems fairly incidental to sorting. If a sorter was told to save parts of records between binders and destroy others he must of necessity separate the binders from the matter between them and dispose of the unwanted material. That operation would require just exactly the manual operations he now performs in reference to binders. What real difference can it make if the carrier, in the sorting process sorts the entire material between binders from the binders themselves. It would appear to be a "sorting" operation.

Approached from another angle the same result is reached. As stated in Award 1314, Docket CL-1336, a position is identified not only by its title which may change, but by the work which characterizes it and which is "recognized" as belonging to it. The addition to the position of duties or functions, as long as they are of the same character or as long as they are

reasonably appropriate to the work of the position and reasonably appurtenant to it, does not create a new position. According to this test the work of separating metal binders from the material between them would not seem to have created a new position or a new work identification even if such were a newly added function. While there is some conflict in the facts, it appears that this work of reclaiming binders was a recognized part of a sorter's work for years.

The carrier states that some time during the year of 1932 the work of reclaiming metal binders was placed in the Librarian of Records. The employees admit that, but state that the reclamation was done by the general clerks who drew from \$3.90 to \$4.50 a day, or more than a laborer would receive from 8 hours' work. But, before the Librarian took over the work the various accounting offices, according to the carrier, destroyed their own records and reclaimed "material" and that such work was "recognized as properly assignable to sorters, filers, office boys and other employees of a similar class." It does not appear whether metal binders were reclaimed during such period, except that the carrier states that in 1932 "in line with past practice" it was deemed profitable to reclaim these binder covers." The carrier also states that the position referred to in this case as 107-14, previously known as Position 256-14 "has been established for a number of years to take care of this reclaim work, as well as perform other service in respect to handling records, in fact, the employee assigned to this position has been required to devote the major part of his time to assist in the filing and removal of records contained in paper cartons, books, ordinary letter files, etc."

We do not mean to imply by this Opinion that under no circumstances could a sorter's position be metamorphosed into a position of laborer. If the entire work or even the great preponderance of it consisted continually of heavy manual labor such as is involved in the use of the hammer and manual labor in disposing of bags, a reclassification might ensue. In this case the high tide of binder reclamation was 1,582 binders in August of 1938. This entailed (4 bolts to a binder) 12,656 hammer and snipping operations a month, or 483 per day—an average of over one a minute for an eight hour day. With sewing and hauling and other work of destruction during such periods the work may have been almost altogether rather heavy manual labor, but there were also low tides, or periods when there was no reclaiming of metal binders. The point when one position changes into another on account of a gradual or sudden change of functioning is in many cases difficult to determine. It depends on the kind of change and the extent of the new work as compared to all the remaining functions. Bulletins are not conclusive. A bulletin need not describe every function of a position. The functions of a position are generally known by the employees although perhaps not to the last refinement. The bulletin under which Wegman bid described the work as sorting and filing as indeed did other bulletins dating back to September 3, 1936. Previous bulletins gave no description beyond that implied by "sorter." As we view the facts in this case the position of sorter—at least Position 107-14 and its predecessor 256-14, always had attached to it a large amount of work dealing with reclamation of binders and disposal of unwanted records. There were high and low tides to the heavier manual work entailed in the reclamation of binders and this gave content and definition to the position.

The petition must be denied, but will be denied without prejudice to opportunity to show such change in the situation as herein indicated as and when such may occur.

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 there was no violation of the rules in this case by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of January, 1941.