

Award No. 1514

Docket No. CL-1443

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that: (1) The position occupied by Mr. E. J. Richards on October 14, 1939, was properly that of store helper and should be so classified and rated, effective October 4, 1939; (2) That the transfer of work formerly done by Mr. Richards to Mechanical Department employes was improper and that this work be returned to Store Department employes; (3) That the position formerly occupied by Mr. Richards be restored and bulletined to employes of the Tacoma Division as 'store helper'; (4) That Mr. Richards be paid for all loss in earnings subsequent to October 4, 1939; based on Rules 1, 11, 76 and 78 of the Clerks' Schedule."

EMPLOYEES' STATEMENT OF FACTS: "On October 14, 1939, Mr. E. J. Richards was employed as a laborer in the Store Department of the Northern Pacific Railway at South Tacoma. He was assigned to service in the 'iron shed' where he was required to check and weigh deliveries of iron received, weigh outbound shipments of iron, mark iron and steel placed in racks for identification purposes and fill requisitions for iron received from the shops. He also assisted in the loading and unloading of material. On October 14, 1939, claim was made that the position occupied by Mr. Richards was properly that of 'store helper'; that it should be so classified and rated and that it be bulletined to employes on the Tacoma Division. Shortly after this claim was filed, the method of operating this iron store was changed, all inbound shipments being unloaded by a group of laborers, and Mechanical Department employes taking such material as they require without Store Department supervision or assistance. Requisitions for such material were then made out by the blacksmith shop foreman and delivered to the accounting department."

CARRIER'S STATEMENT OF FACTS: "South Tacoma shops is one of three main locomotive back shops performing classified heavy repairs to locomotives. A locomotive blacksmith shop is a part of the general shop lay-out. An iron rack is located immediately adjacent to the blacksmith shop in which a current stock of iron and steel bars for use of the blacksmiths is carried. An open storage where heavy billet steel, and other heavy material for forging work is stored, is located immediately in front of the iron rack."

"The iron and steel which goes into the iron rack is unloaded from cars by Store Department laborers and heavy material that does not go into the rack is unloaded from cars into the open storage space either by manual labor or by locomotive cranes. This work is performed under the jurisdiction of a section stockman or working foreman."

"Rule 76 provides that employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions and that employes temporarily assigned to lower rated positions shall not have their rates reduced. This rule has no application in the instant case.

"Rule 78 cited by the Employees provides that wages of new positions shall be in conformity with positions of similar kind or class in the seniority district where created. No new position was created as a result of changing the method of handling the work at the iron storage at South Tacoma. All that was done was to have this work performed by laborers in general instead of by one specific laborer. Under this rule the only question that would be involved would be whether the laborer who performed this work subsequent to the change in method is receiving the laborer's rate. There is no dispute about this.

"The facts in this case and schedule rules applied to those facts show beyond any question that there is no foundation for any phase of the claim of Mr. Richards."

OPINION OF BOARD: When this case was heard before the Third Division in November, 1940, the facts involved and the contentions of the respective parties were in such conflict that the Board requested them to make a joint check of the duties performed and the time consumed on each such duty at the time claim was filed and on date of joint check, as well as to undertake to agree as to what constitutes the duties of store helper and laborer. They were requested to develop and show what, if any, changes were made in the duties of claimant at or about the time the claim was filed. The joint check, bearing date of January 22, 1941, was subsequently filed with the Board, the material part of which is as follows:

"The position of laborer assigned at the iron shed adjacent to the blacksmith shop at South Tacoma was in existence some 19 years prior to the date of this claim.

The weighing of iron, received from South Tacoma rolling mill, was for stock book record purposes. The weighing of such iron has been discontinued subsequent to date of this claim; or if performed, is now done by store department employes.

The item of weighing iron for shipping consisted of placing the material on a push car or platform from which it was loaded onto trailers and taken to the store room. Mr. Richards says that, in loading the iron, a helper from the store room directed this work. Mr. Richards assisted in weighing or measuring the iron for shipment. Store department employes still perform this work.

Filling requisitions for shops: Blacksmith shop foreman Hass, who has been employed at South Tacoma for the past ten years, stated there has been no change in handling material for the blacksmith shop during that period of time. Blacksmith and helpers have, during this ten year period, helped themselves to iron and steel in the rack and storage yard adjacent to the blacksmith shop. Approximately 75% of the material from the iron shed and storage yard is used in the blacksmith shop. The balance of 25% of material taken from the iron shed and storage yard is now and has heretofore been handled by store department employes.

Prior to date this claim arose, requisitions (form 731) covering material for the blacksmith shop were handed to the laborer employed at the iron shed, who initialed them, and in some instances placed weight or quantity of iron taken on the form, after which the form was returned to the blacksmith shop foreman, who verified weights, classes and quantities of material received, after which requisitions were sent to the accounting department. Within the last

ninety days, the blacksmith foreman has been delivering these requisitions to the store office, from where they are sent to the accounting department.

Requisitions for material other than used in the blacksmith shop were, as above stated, handled through the store department.

Subsequent to date of this claim, departmental heads requiring material which must pass blacksmith shop, have placed an inter-department order with the blacksmith foreman, and requisitions for such material are handled in the same manner as for material actually used in the blacksmith shop. Requisitions for material not passing through the blacksmith shop are still handled by store department as in the past. The only change, therefore, in handling of requisitions has been that now requisitions for material to be worked in the blacksmith shop for other departments, are made out by the blacksmith shop foreman.

Insofar as the physical handling of the material is concerned there has been no change in such handling subsequent to the date this claim arose, except insofar as the interdepartmental orders which now pass through the blacksmith shop as above described are concerned. The only change that has been made is in the method of handling requisition forms from the blacksmith shop to the store department. These requisitions do not now bear the initials of a store employe at the iron shed.

Painting ends of steel for identification: This work consists of daubing a particular color paint on certain classes of refined iron and steels. About 5% of the iron and steel handled in the iron rack and storage yard adjacent thereto bears paint marks. The store employe painting the ends of these bars does not identify the material by his own personal examination; but if one end of a bar is not painted he paints the unpainted end for identification, or if a part of a bar has been cut, he then paints the end that is left. In the event iron to be painted is not painted on receipt, information is taken from the invoice and bars painted accordingly.

Unloading and checking steel received from Bethlehem Steel Corporation: The man in the iron shed made a blind tally of this steel. The unloading and checking of steel received from Bethlehem Steel Corporation, or other commercial manufacturer, is still being handled by store department employes, generally by working foreman, helper and laborer.

Sorting damaged tools: This is work that is usually done by store department laborers, and is still performed by them.

The statement of work, as above described, and the allocation of hours to such work, cannot be checked. It is agreed that the statement covering services performed for the week August 14th to 18th inclusive includes physical work of unloading, loading, and placing material in the iron racks.

Respectfully submitted,

(S) Ralph Speer
General Chairman
Brotherhood of Railway &
Steamship Clerks, Freight
Handlers, Express & Station
Employes."

(S) M. J. Byrnes
Asst. to Vice President
Northern Pacific Rwy. Co.

The question that confronts us is whether or not E. J. Richards at the time the claim was filed was performing the duties of a laborer in the

store department of the Northern Pacific Railway Company at South Tacoma or whether he was performing the duties of a store helper. In compliance with the request of the parties to define the duties of store helper and laborer there was filed on January 22, 1941, a joint statement of the parties. We quote from same:

"Statement of what constitutes duties of store laborer, store helper and working foreman in Store Department of Northern Pacific Railway Company, South Tacoma, Washington.

Information is compiled on basis of statements made by Assistant General Storekeeper, District Storekeeper, and General Store Foreman at South Tacoma; and by Section Stockman Taylor who is also Local Chairman of the Brotherhood of Railway Clerks, and by Section Stockman Wiggins.

While the Interstate Commerce Classification of employees does not distinguish between store laborers and store helpers, and covers only one general class of employees performing certain work in the Store Department defined by the Interstate Commerce Commission as store laborer's work, there are on the Northern Pacific two classes of employees who perform this particular class of work, namely; store laborers and store helpers. The line of demarcation between store laborer and store helper is difficult of precise ascertainment, and there is of necessity an overlapping of these two kinds of positions.

At South Tacoma, a store laborer, generally speaking, works outside the store room proper. Store laborers who are employed in and around the store room proper are usually used to unload, unpack, store, pack and load material that is handled through the store room, and to assist the section stockman, store helper or working foreman as directed.

The laborers who are employed outside the store room proper, namely; in the lumber yard and reclamation plant, work under the direction of a lumberman or foreman. The title of 'lumberman' is synonymous with the title 'foreman.' These laborers handle material outside the store room proper to the same extent as do laborers who are employed in and around the store room proper.

A store helper is employed in and around the store room proper. His duties consist of handling material that is received and disbursed. When material has been received, the store room employees, including section stockmen, working foremen, helpers and laborers unpack and store the material in places provided therefor. When material is disbursed, the principal duty of the helper is to take requisitioned material from the shelves, bins or other places of storage and prepare it for shipment, and place necessary information on the requisition. The helper works with the section stockman in keeping up required stock, in compilation of stock records and in any other work that may be directed by the section stockman. The helper is in effect an assistant section stockman in training for section stockman position."

Thus we find that these railroad men with years of experience and knowledge of the working conditions and duties of the employees, confess that it is difficult for them to point out the exact differences between the duties performed by a "Store Laborer" and a "Store Helper," and admit that these duties overlap. Needless to say this Referee has been greatly bothered.

Petitioner in his claim sets out a five day check of the duties performed by Richards in August 1939. This check shows the duties performed and the time consumed during this five day period in performing each duty. The joint check confirms the statement of the petitioner. It is conceded

that more than 50 per cent of his time was devoted to filling requisitions, and, in addition, it included such work as unloading, loading, and placing material in iron racks. It is also shown that the weighing of iron by the employe, here involved, classified as a laborer, is for stock book record purposes. The filling of requisitions is one of the important duties of a store helper. The record showing more than 50 per cent of Richards' time was devoted to filling requisitions, the Board is of the opinion the duties of this position were those of store helper as contended by the petitioner and that he should be so classified and rated October 4, 1939.

The joint checks also shows that "Within the last ninety days, the blacksmith foreman has been delivering these requisitions to the store office, from where they are sent to the accounting department." This confirms petitioner's contention in his Statement of Facts that work performed by the employe here involved was, shortly after this claim was filed, removed from the scope of the current agreement and assigned to employes in the blacksmith shop of the mechanical department. These mechanical department employes are not covered by the current agreement and the removal of this work was in violation of the collective agreement. Compare Awards 630, 751, 1300, 1314.

The carrier's argument to the effect that the position, having been classified as a laborer for a number of years, should continue to be so classified is not sound. Continued violations of existing rules do not change or diminish the binding effect of such rules. See Award 561. The petitioner is requesting only that the position should be classified, rated and the current agreement correctly applied as of the time the violation was called to the attention of the carrier. Compensation for the violation prior to the institution of this claim is not sought.

Upon the whole record of this case the Board concludes that the claim of the petitioner should be sustained.

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 the carrier violated the current agreement as contended by petitioner.

AWARD

Claim (1, 2, 3, and 4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of July, 1941.