

Award No. 1515

Docket No. CL-1444

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 in behalf of Mr. William Crosetto that the position occupied by Mr. Crosetto should be classified and rated as store helper, effective October 4, 1939, and bulletined to employees of the Tacoma Division, based on Rules 11, 76 and 78 of the Clerks' Schedule."

EMPLOYEES' STATEMENT OF FACTS: "Mr. William Crosetto is employed as a laborer in the Northern Pacific store at South Tacoma, Washington, and is paid 48 cents per hour. He is assigned to work in the oil house, under the supervision of a section stockman. His assigned duties are to operate a grease machine, fill requisitions, ship material to other points and keep the oil house clean. Claim was filed on October 14, 1939, that this position should be classified as store helper, rated at 59 cents per hour, effective October 4, 1939, and bulletined as a vacancy."

CARRIER'S STATEMENT OF FACTS: "An oil house is located in the Store Department, South Tacoma shops. In this oil house there is a grease forming machine where bulk grease is pressed into various forms for locomotive use. This is done by the use of forming blocks which are plainly marked and placed in the grease forming machine which is operated by air. No particular skill is required in the operation of this machine. This machine and other similar machines have been in use on this Railway for more than twenty-five years and have always been operated by store laborers."

"Mr. Crosetto, employed as laborer in the storeroom at South Tacoma, operates the grease forming machine which consumes about half of his time. The balance of his time is devoted to physical handling of materials such as oils, paints, etc., the cleaning of equipment and keeping the oil house in proper condition."

"Mr. Crosetto reports to a section stockman who has charge of the stock of grease, oils, waste, paints, etc., and whose office is located in the oil room."

"The work performed by Mr. Crosetto is work that is generally performed on this Railway by storeroom laborers."

POSITION OF EMPLOYEES: "It is the position of the Employees that the position occupied by Mr. Crosetto is properly a store helper position and should be so classified and paid. It is generally recognized that a laborer does not have to have any particular skill or training. As a matter of fact, it is not unusual to find a great many 'laborers' who are unable to read or write. Such a man could not fill the position occupied by Mr. Crosetto and yet he would have the right, under the seniority rules, to dis-

"The position occupied by Mr. Crosetto is that of a laborer; this position has been classified as a laborer for more than twenty years, and has carried this classification prior to and subsequent to the effective date of the current Clerks' Schedule. Other similar positions are and have always been classified as laborer. There has been no changes in the assigned duties or responsibilities of this position that warrant changing its classification. The facts in this case plainly show there is no foundation for the Employees' claim. Schedule rules cited by the Employees applied to the facts in this case make it perfectly plain that this claim is without merit."

OPINION OF BOARD: When this case was argued 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 time claim was filed and on date of joint check, and to undertake to agree as to what constitutes the duties of store helper and store laborer. They were also requested to develop and to show what, if any, changes were made in the duties of claimant at or about the time 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:

"There have been no changes in the duties of the position covered by this claim subsequent to the date of the claim. This position has been in existence for approximately twenty-five years, and the work has been performed by a man classified as a laborer.

"Mr. Crosetto has been in service approximately fifteen years, working as laborer and store helper. He entered the position in the oil house as a result of reduction in force. He had previously not worked in the oil room. He stated that he had familiarized himself with operation of the grease machine the first day he was on the job, and operated it from then on.

"Mr. Crosetto is not now on the job, and has been succeeded by another employee who had no previous experience in operating the grease machine.

"Work of servicing tractors and trucks with gasoline and oil: There are a total of seven trucks and tractors which are serviced with gasoline and oil. Mr. Crosetto stated that he simply filled the gasoline tank, and placed oil in the engine after the chauffeur had drained off the oil.

"Operating grease machine: It develops that at the present time about 90 per cent of the time of this employee is devoted to operating the grease machine. A fair estimate of the average time devoted to this work is 50 per cent of the man's time.

"Shipping material to line points: While the statement of time submitted by employees shows 20½ hours during the five days ending August 13, 1939, devoted to this work, it was agreed that normally less than half of the man's time would be devoted to both shipping material and filling supply train requisitions. In shipping material to line points, Mr. Crosetto stated that he assembled the material, packed it and checked it against the requisitions, and marked the packages. The work in the oil house in this respect consists of placing the required number of packages of grease in a shipping container, namely; a box, package or open skid, and placing paints, oils and gasoline in cans or other containers.

"Work performed in the oil house is under the direct supervision of section stockman, who has a desk in the oil house.

"The present incumbent of the position does not fill requisitions to the extent that Mr. Crosetto did. Mr. Crosetto and Mr. Wiggins,

section stockman, estimated that when Mr. Crosetto was on the job about 30 per cent of his time was devoted to assembling, packing, checking and marking material for shipment on requisitions.

"Filling supply train requisitions: This work is performed quarterly, and is analogous to work of shipping material to line points.

"The grease machine forms grease in various sizes for locomotive driving box and rod cup use. Grease is received in bulk and placed in the machine through a hopper and then pressed into the various sized moulds. The machine is operated by air. Moulds of various sizes are used in this forming operation, and are marked by number to indicate size of cake of grease that is being pressed out of the machine. The operator of the machine changes the moulds to correspond with the size of cake that is to be pressed. When the various sizes of cakes come out of the machine, they are wrapped in paper by the operator, and a number is stamped on the package which corresponds with the number of the mould. These packages of grease are then placed on a shelf adjacent to the machine.

Respectfully submitted,

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

(S) M. J. Byrnes,
Asst. to Vice President,
Northern Pacific Railway Company

The question that confronts us is whether or not William Crosetto at the time the claim was filed was performing the duties of a laborer in the store department of the Northern Pacific Railway Company, Tacoma Division, or whether he was performing the duties of a store helper. In compliance with the request of the parties to define the duties of a store helper and laborer there was filed on January 22, 1941, a joint statement of the parties. We quote from same:

"While the Interstate Commerce Classification of employes does not distinguish between store laborers and store helpers, and covers only one general class of employes 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 employes 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 employes, including

section stockman, 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 the parties agreed that the position of store helper and laborer overlapped and that the line of demarcation between them is difficult of precise ascertainment. The joint check shows that Crosetto has been in service working as a laborer and a store helper; that one of the duties of the position he held at the time this claim was filed was in shipping material to line points; that he assembled the materials, packed them, checked them against the requisition, and marked the packages; that it is agreed by the parties that one of the principal duties of a store helper at South Tacoma "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 Board concludes from the whole record of this case that the position in question is that of a store helper and effective October 4, 1939, it should be so classified and rated as provided for in the current agreement.

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. The continuing violation of existing rules does 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 clearly 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. The claim of 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 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 carrier violated the current agreement as contended by petitioner.

AWARD

Claim 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.