

Award No. 1729
Docket No. CL-1808

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS'
ASSOCIATION, INC.

THE CHICAGO AND NORTH WESTERN RAILWAY
COMPANY

(Charles M. Thomson, Trustee)

STATEMENT OF CLAIM: Claim of the System Appeals Committee and request that:

(1) The carrier has violated and continues to violate the agreement by abolishing the position of Local Storekeeper at North Proviso, Ill. 9-23-1937, and assigned the supervisory duties connected therewith to other employees outside the scope of the agreement; and

(2) That the carrier shall be required by appropriate award and order to restore said supervisory duties of the class to a local storekeeper position within the scope and operation of the effective agreement; and

(3) That employees adversely affected by the carrier's arbitrary action shall be reimbursed for all wage losses sustained retroactive to September 23, 1937.

There is in evidence a collective agreement between the parties bearing effective dates of August 1, 1936, January 1, 1939, and January 1, 1941.

EMPLOYEES' STATEMENT OF FACTS: There is an effective agreement in existence between the parties, said agreement is dated and last amended January 1, 1941, and the claim herein presented arises out of and is based upon the provisions of the Scope Rule Number 1 (a), and the terminating clause Rule No. 19.

For the purpose of this particular dispute we hereby stipulate the exact wording of the Rules that it is contended applicable to the action of the carrier abolishing positions arbitrarily, and removing the work from the scope and operation of the agreement:

"SCOPE

1. These rules, amended effective January 1, 1941, will govern working conditions of the following classes of supervisory employees on the Chicago and North Western Railway:

(a) Store Department:

1. Local storekeepers.

2. Assistant storekeepers.

* * * * *

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paragraph of rule 19, supervisors' agreement, were violated when position of local storekeeper at North Proviso was abolished. Rule 1 (a) lists the class of positions in store department coming within the scope of supervisors' agreement. The last paragraph of rule 19 refers to changes in the provisions of the agreement. The provisions of rules 1 (a) and last paragraph of rule 19, supervisors' agreement, are not involved in this case. The railway company concedes that positions of local storekeepers are of a class coming within the scope of supervisors' agreement, and at points such positions are maintained as a result of service requirements the incumbents are compensated under provisions of rules in that agreement. Further, the abolishment of position of local storekeeper at North Proviso did not involve amendment, revision or annulment of any rules in supervisors' agreement.

It is the position of the railway company that the discontinuance of position of local storekeeper at North Proviso in circumstances outlined above was not in violation of the provisions of any schedule rule or agreement with the supervisors' association, and that the claim as submitted to the Board in this case cannot properly be sustained.

OPINION OF BOARD: This claim involves the local storekeeper who had been employed at North Proviso. The parties negotiated a collective agreement effective August 1, 1936, and later amended effective January 1, 1939, and January 1, 1941. The position of local storekeeper at North Proviso was covered by scope rule No. 1, which reads as follows:

"These rules, amended effective January 1, 1941, will govern working conditions of the following classes of supervisory employes on the Chicago and North Western Railway:

(a) Store Department:

1. Local Storekeepers.
 2. Assistant Storekeepers.
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On September 23, 1937, the Carrier discontinued the position in question and assigned all of the supervisory duties to the division storekeeper at North Proviso. The reason for such action upon the part of the Carrier is stated as follows:

"An analysis of the work that had been assigned to the local storekeeper at North Proviso indicated that 85% of his time was consumed in the performance of clerical and routine work and only 15% of his time consumed in supervision."

The controlling rules of the Agreement, in addition to the scope rule above cited, are as follows:

"PREAMBLE. The rules contained herein constitute in their entirety an agreement between the Chicago & North Western Railway Company and the American Railway Supervisors' Association, Incorporated, governing working conditions of storekeepers, mechanical department foremen or supervisors of mechanics, yardmasters, telegraph and electrical engineers' department chief linemen and foremen, district special agents, special agents, and sergeants, hereinafter referred to as supervisors, and will supersede all previous agreements, rulings, or understandings thereon."

"SUPERVISOR'S DUTIES. 6. Supervisors will not be required to perform work of the craft or class supervised other than the recognized duties necessary in line with instructions and training of men under their supervision."

"AGREEMENT—CHANGES IN. 19. * * * The foregoing rules constitute in their entirety an agreement between the Chicago and North Western Railway Company and The American Railway Super-

visors Association, Inc., and no portion thereof will be amended, revised, or annulled, except upon thirty days' written notice by either party to the other, or by mutual agreement between the officer in charge of personnel for the railway company and the general committee for the association."

It is the position of the Employees that positions are not actually abolished where duties remain to be performed, and that Carriers may not arbitrarily remove work from collective agreements and assign it to employees not covered thereby, and that the Carrier breached the Agreement by removing work from the contract which amounted to at least 15% of the time of the employee involved.

It is the position of the Carrier that the scope rule simply sets forth the classes of employees covered and the conditions under which they will work; that the Agreement does not bestow upon the employees the sole right of supervision; that Rule 2 of the Agreement recognizes the right of the Carrier to abolish any position, covered by the Agreement, the need for which no longer exists; and that prior to September 23, 1937, there was employed at North Proviso a local storekeeper who, in addition to his other duties, exercised such supervision as was required and as was delegated to him by his superior, the division storekeeper; that because of the centralization of its maintenance work in the mechanical and car department, the need for the continuation of the sub-storehouse at North Proviso has diminished to such an extent that only one material handler was necessary to take care of the needs at that point and that any supervision necessary was assumed by the division storekeeper as a part of his regular duties.

The sole question involved in this case may be stated as follows: Did the Carrier breach the Agreement between the parties when, on September 23, 1937, it discontinued the position of local storekeeper at North Proviso and concurrently therewith remove those duties from the scope and operation of the Agreement by assigning them to an employee not covered by the Agreement?

It is a basic principle that Carriers may not arbitrarily remove work from collective agreements and assign it to employees not covered thereby. In Award No. 751 it was said:

"This Board has repeatedly held that a carrier may not arbitrarily take work from under the scope of an agreement. Such a prerogative would be destructive of the agreement. See Awards 631, 637, and 736."

In Award No. 1272 it was said:

"While, of course, never gainsaying that carriers may abolish positions included in agreements where there is no work pertaining thereto to be performed, still, and with practical unanimity, the decisions of this Division have been to the effect that where work within the involved agreement remains to be done, as here, it is subject thereto, and must be performed by the class of employees to which the agreement applies."

It is also a cardinal rule that the Board does not modify agreements. Its function is to interpret them. It is undisputed that at least 15% of the work heretofore performed was removed from under the Agreement, and it must be held that such removal of even a small portion of the work was a violation of the Agreement.

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 employee involved in this dispute are respectively carrier and employee 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 applicable agreement as claimed by the petitioner.

AWARD

Claim (1, 2 and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of February, 1942.

Dissent to Award 1729, Docket CL-1808

The error of this award arises from failure to acknowledge the right of the Carrier to have supervisory and other employees, covered or not covered by agreements, assume the performance of work incident to their positions.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ C. C. Cook
/s/ A. H. Jones
/s/ R. H. Allison