

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 Assistant Storekeeper at Clinton, Iowa, on June 27, 1939, and assigned the supervisory duties connected therewith to other employes 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 an assistant storekeeper or local storekeeper position within the scope and operation of the effective agreement; and

3. That employes adversely affected by the carrier's arbitrary action shall be reimbursed for all wage losses sustained retroactive to June 27, 1939.

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

EMPLOYES' 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 No. 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 to be 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 employes on the Chicago and North Western Railway:

(a) Store Department:

1. Local Storekeepers
 2. Assistant Storekeepers.
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In the rearrangement of work at Clinton store department at the time position of assistant storekeeper was discontinued the direct supervision of all clerical employes was taken over by the chief clerk, the direct supervision of all employes engaged in handling materials, supplies, etc., placed in charge of the store foreman, where it properly belonged, the clerical work was assigned to employes of a class coming within the scope of clerks' agreement, to whom such work was properly assignable. The division storekeeper performs such general supervision required. There are no schedule rules that preclude assignment of duties formerly handled by the incumbent of a discontinued position to classes of employes to whom such work is properly assignable under schedule rules, recognized practices and understandings. In this case the assignment of clerical and other routine work to employes of a class coming within scope of clerks' agreement, placing store foreman in charge of material handlers, assignment of chief clerk to direct supervision of all clerical employes, and placing all of the general supervision in the hands of division storekeeper was entirely proper. At a number of points on this railway where all of the general supervision of store department activities is handled by the division storekeeper, positions of assistant storekeepers are maintained only when the requirements are such as to warrant such positions. It cannot be properly contended by the supervisors' association that due to the fact the assistant storekeeper at Clinton, in connection with his other duties, was permitted to perform service of a class coming within scope of other agreements, the railway company must continue the position to perform such work. It is inconsistent to expect the reestablishment of position of assistant storekeeper at Clinton when there is no work which could consistently be assigned thereto.

The employes in notice of October 23, 1941 advising the Third Division, National Railroad Adjustment Board, of their intention to make ex parte submission of this case to the Board, state that the abolishment of assistant storekeeper position at Clinton was in violation of Section 1 (a) of Scope Rule and last paragraph of rule 19, supervisors' agreement. Rule 1 (a) lists the class of positions in store department coming within the scope of supervisors' agreement, and last paragraph of rule 19 refers to changes in the provisions of the agreement. The railway company concedes that positions of assistant storekeepers are of a class coming within the scope of supervisors' agreement, and that incumbents of such positions are subject to the provisions thereof. However, there is nothing in rule 1 (a) that would preclude the railway company from discontinuing position of assistant storekeeper at Clinton in circumstances outlined above. Further, discontinuance of such position did not involve any changes or annulment of rules in the supervisors' agreement.

It is the position of the railway company that there was no violation of any schedule rules of agreements with the supervisors' association involved in the abolishment of position of assistant storekeeper at Clinton. This position was discontinued due to the fact that after the work at that point had been rearranged and assigned to the classes of employes to whom it properly belonged, the services of an assistant storekeeper were no longer necessary.

OPINION OF BOARD: It is agreed that the agreement was amended January 1, 1939; that position of assistant storekeeper at Clinton, Iowa is covered by the agreement and that this position was discontinued June 27, 1939 and such supervisory duties as remained were removed from the scope and operation of the agreement and assigned to employes not so covered.

It is the position of the Carrier that due to reorganization of the personnel at Clinton, Iowa adequate supervision was provided without the aid of an assistant storekeeper; that the position was abolished because no longer necessary and that the division storekeeper can and does exercise sufficient supervision over the store operation.

It is the position of the Employes that such supervisory duties as remained were assigned to employes outside the scope of the agreement and in violation thereof.

The record does not state the amount of time required to supervise properly but it is admitted that such supervisory duties as remained were transferred to employes not covered by the agreement.

Under the agreement entered into between the parties there was no exception made pertaining to jobs that only required part-time supervision. The principle involved in this case is the same as that in Award 1729, Docket CL-1808 and Award 1730, Docket CL-1809 and the awards in those cases are reaffirmed. There 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 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 applicable agreement as contended 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 1731, Docket CL-1810

The error of this award arises from failure to acknowledge the right of the Carrier to have supervisory and other employes, 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