

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 Escanaba, Michigan, on April 15, 1940 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 an assistant storekeeper or 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 April 15, 1940.

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 effective 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 are applicable to the action of the carrier abolishing positions arbitrarily, and removing the work from the scope and operation of the extant 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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agreements that preclude the assignment of duties formerly handled by the incumbent of a discontinued supervisory position of assistant storekeeper to employees of a class to whom such work is properly assignable.

The present store department force at Escanaba, exclusive of the division storekeeper, consists of only eight employees, classified as follows:

- 1 Steno-Clerk
- 1 Leader Material Handler
- 1 Order Filler
- 4 Material Handlers
- 1 Motor Truck Operator

As outlined above, the direct supervision of the material handling gang is properly assigned to a leader material handler, a position coming within the scope of clerks' agreement. It is inconsistent to expect the assignment of an assistant storekeeper in addition to the division storekeeper at Escanaba to handle the general supervision of the material handling gang, now directly supervised by a leader material handler, and the small number of other employees constituting the store department force at that point.

The employees in notice of October 23, 1941 advising the Third Division, National Railroad Adjustment Board, of their intention to make ex parte submission to the Board on this case, state the Scope Rule 1 (a) and last paragraph of rule 19, supervisors' agreement, were violated when position of assistant storekeeper at Escanaba was abolished. Rule 1 (a) lists the class of positions in store department coming within the scope of supervisors' agreement. The concluding paragraph of supervisors' agreement refers to changes in the provisions of the agreement. The provisions of rules 1 (a) and concluding paragraph, supervisors' agreement, are not involved in this case. The railway company concedes that positions of assistant 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 assistant storekeeper at Escanaba 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 assistant storekeeper at Escanaba 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: The facts in this case are not in dispute. The position of assistant storekeeper at Escanaba, Michigan, is covered by the agreement. On April 15, 1940 this position was discontinued and the duties assigned to the division storekeeper and store foreman, neither position being covered by the agreement.

The sole question involved in this dispute may be stated as follows: Did the Carrier violate the agreement when on April 15, 1940 it discontinued the position of assistant storekeeper at Escanaba, Michigan and removed the supervisory duties from the agreement and assigned them to the division storekeeper and store foreman, employees not within the scope of the agreement?

It appears that on January 1, 1939 the position was placed in the amended agreement and there is nothing in the record to show that the occupant of the position was not on April 15, 1940 performing the same duties that he performed on January 1, 1939. The question in this case is controlled by Award 1729, Docket CL-1808.

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 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 1735, Docket CL-1814

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**