

Award No. 1737
Docket No. CL-1816

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 Chadron, Nebraska, subsequent to March 6, 1939, and assigned the supervisory duties connected therewith to another employe 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 date of abolition of the affected position.

There is in evidence an 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 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 employes on the Chicago and North Western Railway:

(a) Store Department:

1. Local storekeepers
 2. Assistant storekeepers.
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mainly in performing work of a class coming within scope of clerks' agreement, such as, ordering and checking locomotive, car, track, B&B, and water supply materials, and other miscellaneous clerical work. In reassignment of duties after the position of assistant storekeeper was abolished the clerical work was assigned to employees coming within the scope of clerks' agreement, where it properly belongs. The material handling crew was placed in charge of a leader material handler, a position of a class coming within scope of clerks' agreement, which arrangement is the same as is in effect at other store department points where the service requirements warrant. The division storekeeper, who has general supervision over all store department operations, continued such supervision subsequent to abolishment of position of assistant storekeeper. Positions of assistant storekeepers are established to assist division storekeepers in the performance of their supervisory duties when the service requirements necessitate such assistance. However, the requirements at Chadron are such that the division storekeeper can adequately take care of all of the supervision necessary. There are no schedule rules that preclude assignment of duties formerly handled by the incumbent of a discontinued position to a class of employees to whom such work is properly assignable under schedule rules or recognized practices and understandings. The fact that the assistant storekeeper at Chadron had been performing work of a class coming within the scope of clerks' agreement would not justify contention that the position should be reestablished and the incumbent permitted to continue performing work properly assigned to clerical employees and leader material handler. Such action would be in violation of agreement with the clerks' organization and involve a question of jurisdiction between the clerks' and supervisors' organizations.

The present force at Chadron, exclusive of the division storekeeper, is as follows:

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

It is evident that all of the necessary supervision of this small force can be handled by the division storekeeper to whom such work is properly assignable.

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 Chadron was abolished. Rule 1 (a) lists the class of position 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 Chadron 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 Chadron and rearrangement of work 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: It is agreed that the position of assistant storekeeper at Chadron, Nebraska, was covered by the agreement as amended January 1, 1939. The position was discontinued on July 20, 1940 and the supervisory duties after the discontinuance were assigned to the division storekeeper, an employee not covered by the agreement.

It is the position of the Carrier that Chadron, Nebraska is a division point at which a storehouse is maintained under the direct charge and supervision of a division storekeeper. Prior to about March 6, 1939, the volume of repairs made to rolling stock was such as to require the maintenance of a large stock of material and supplies on hand for consumption at that point. The division storekeeper was assisted in his work by an assistant storekeeper. Effective on or about March 6, 1939, a considerable portion of the repair work which was performed at Chadron was transferred to another point, in conformity with the Carrier's program of consolidating its maintenance and construction of locomotives and cars at centralized points. As a result thereof, the store department requirements were reduced to the point where the division storekeeper no longer required the assistance of an assistant storekeeper, and the position of assistant storekeeper was abolished.

It is the position of the Employees that the discontinuance of the position and the assignment of such duties to another employe not covered by the agreement was a breach thereof.

We are in accord with the view of the Employees. The principle involved in this case is the same as in Award 1729, Docket CL-1808 and is controlled thereby.

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 1737, Docket CL-1816

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