

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

COLUMBUS AND GREENVILLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that,

(1) The Carrier violated the Clerks' Agreement when on or about November 16, 1932 it temporarily abolished the position of Stockman, rate \$4.32 per day, in the Columbus, Mississippi Storehouse, and reinstated the position on or about September 8, 1938, as Clerk-Stockman, but failed and refused to add to the preexisting rate the five (5¢) cents per hour or forty (40¢) cents per day increase effective August 1, 1937, and that,

(2) The Carrier shall be required to re-imburse the employees affected for wage losses sustained through such rules violation during the period of September 8, 1938, through August 31, 1939.

EMPLOYEES' STATEMENT OF FACTS: The position of Stockman was established by Supplement 1, effective February 6, 1924, to our current agreement which was effective July 1, 1922, and the position was continued as Stockman until temporarily abolished on or about November 16, 1932, and subsequent pay roll records have been noted "Stockman, rate \$4.32, temporarily abolished," until August 1937 when the notation was changed to "Stockman, rate \$4.72, temporarily abolished."

The position classified as Stockman, rate \$4.32 per day, prior to its abolishment on or about November 16, 1932, and the position reinstated on or about September 8, 1938, under the title of "Stockman-Clerk" or "Clerk-Stockman" embraced duties indicated in the following bulletins issued by the Superintendent:

"Bulletin No. 167 September 3, 1930" in part

"Bids will be received & etc."

"Stockman—Rate \$4.32 per day"

"Principal duties—receiving, storing, and issuing materials and other supplies, especially oil supplies, mixing of dope at Storehouse and such other duties as may be assigned by the Purchasing Agent"

"Bulletin No. 17. Circular No. 8, Feb. 12, 1932" in part.

"Effective February 1st, 1932, the pay of all employees will be reduced ten (10) per cent."

"Bulletin No. 80, October 31, 1932" in part.

"Applications—for position as Stockman"

"Rate—\$3.89 per day."

CONCLUSION

We submit that the claim should be denied for the reasons that:

1. The rate of \$4.32 was for a new position within the carrier's right to create and not controlled by any prior rate.

2. (a) There was no compliance by the employee with Rule 34 of the agreement, in that, no written complaint has been filed with the carrier by him.

(b) No complaint of any kind was made within seven (7) days of the alleged cause of complaint.

3. The alleged cause of complaint had disappeared more than seven days before complaint of any kind was filed, in fact, more than a year prior to date of complaint.

OPINION OF BOARD: This is a claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Columbus and Greenville Railway Company, carrier, violated the Clerks' Agreement by, on November 16, 1932, temporarily abolishing the position of Stockman with a rate of \$4.32 per day at the Columbus, Mississippi Storehouse and by reinstating the position under the name Clerk-Stockman on September 8, 1938, but without giving the position the 1938 rate of pay which was 40 cents per day in excess of the 1932 rate.

The carrier contends the position of Stockman was abolished on November 16, 1932, and the new position of Clerk-Stockman established on September 8, 1938, for which position it had the right to establish a rate of pay. If by the contention it is meant that the position was permanently abolished that is incorrect. The claimant points out in its ex parte submission, and this is not disputed, that the position was carried on the payroll records to August 1937, as "Stockman, rate \$4.32, temporarily abolished" and thereafter, "Stockman, rate \$4.72, temporarily abolished."

We have a right to assume from this continued recognition of the existence of the position that when the substantial duties of the position returned the position would be filled by a Stockman with the current rate of pay.

It now becomes necessary to determine whether or not the duties of the position of Clerk-Stockman or Stockman-Clerk are substantially the same as those of Stockman. To aid in this we have the benefit of two bulletins for the position of Stockman, one dated September 3, 1930 and one dated October 31, 1932, and two for Clerk-Stockman or Stockman-Clerk, one dated October 6, 1938 and one August 30, 1939. A comparison of the two former with the latter two discloses that the duties bulletined for the positions of Stockman were practically identical with those bulletined for Clerk-Stockman or Stockman-Clerk.

In the light of this analysis of the record it seems clear that the carrier did in fact on September 8, 1938, under the title of Clerk-Stockman or Stockman-Clerk, restore the position of Stockman which had been temporarily abolished on November 16, 1932, but kept alive and in suspension continuously on the payroll records.

The claim, therefore, must be sustained unless the claim is barred under Rule 34 of the Agreement. The rule is as follows:

"Rule 34.

"An employee who considered himself unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within seven (7) days of the cause for complaint."

Under the decisions of this and other divisions of this Board it is not necessary to the hearing contemplated by this rule that the request shall be made by the employee. We need only consider the time feature of the rule.

There is no uniformity of opinion as to the correct interpretation and application of such rules as this one. Some incline to the view that they were intended to apply to such situations as the one presented here and some that they were not.

This referee, in conformity with the views expressed in other opinions, regardless of whether or not such limitations were intended to be operative in situations such as this one, definitely commits himself to the view that such limitations, again in such situations as this one, are unreasonable and against a sound public policy, and for these reasons may not be enforced. What character of limitation would be reasonable is not a matter determinable by this Board. It is not clothed with power to establish limitations upon claims.

Purely as a voluntary statement this referee is on the opinion that if this matter were presented to courts of law, in most jurisdictions the courts would hold that provisions in collective bargaining agreements which limit the time for presentation of claim for unpaid wages to a period short of the time fixed by statute for commencement of suit on such causes of action in the state where the right of action occurred would be void.

In the light of the view expressed it becomes unnecessary to discuss the affirmative of positive application of Rule 34, but we have had no intention to say that the rule should not be held to contain a proper limitation upon the right to present a grievance when such grievance is one involving a matter not covered by the rules.

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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1942.

DISSENT TO AWARD NO. 1839, DOCKET CL-1650

This award declares unreasonable and against public policy the 7-day limitation for presentation of claim in the situation of this case. In our view the declaration is unwarranted, because:

First: There is no finding by the Referee that the contract is void; on the contrary, he finds it a valid agreement between the parties.

Second: There is no claim by the Referee that Rule 34 is vague and ambiguous which would give the Referee the right to properly interpret the agreement on that account under the statute.

Third: The Referee, by his decision admitting the contract is valid and admitting that it is clear and does not need interpretation as to its meaning, however volunteers his opinion that a time limitation, such as 7 days in the rule here involved, is too short a time for presentation of claim for unpaid wages, and therefore changes the time limit, although the parties to the agreement must be presumed to be satisfied with this provision.

If this decision stands, it would seem that there is no agreement between the Railroad and the Employes, whether valid or not or whether ambiguous or not, which cannot be changed according to the personal feelings of the referee.

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