

Award No. 1842
Docket No. CL-1653

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 May 6, 1932 it temporarily abolished the position of Stockman rate \$4.32 per day in Columbus, Miss. Storehouse and reinstated the position on or about August 2, 1937 at rate of \$3.92 per day, changing the title to that of Clerk-Stockman, and that,

(2) The Carrier violated agreement rules when it worked, and paid, the incumbent less than the full time on a regularly assigned position, and that,

(3) The Carrier shall be required to reimburse the employe affected for wage losses sustained through such rules violation.

EMPLOYEES' STATEMENT OF FACTS: Classification "Stockman" at rate \$4.32 was established by Supplement No. 1, effective February 6, 1924 to our present or current agreement, effective July 1, 1922, and this classification and rate was continued until the position was temporarily abolished on or about May 6 1932, and subsequent payroll 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."

On July 19, 1937 the carrier issued Bulletin No. 519 advertising temporary position covering the same class of work as had been performed by Stockman paid \$4.32 per day, but in reinstating the position the carrier changed the classification to that of Clerk-Stockman and reduced the rate of pay to \$3.92 per day, and to this improper rate thus established the five (5¢) per hour or forty (40¢) cents per day increase, effective August 1, 1937, was then applied.

Position classified as "Stockman," rated \$4.32 per day, prior to its abolishment on or about May 6, 1932, and the position reinstated on or about August 2, 1937 under the title "Clerk-Stockman" embraced duties indicated in the following bulletins issued by the Superintendent:

BULLETIN No. 167 September 3, 1930 in part

"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"

However, without prejudice to our position under Rule 34, we state further:

The duties of the position in question were changed considerably from those performed by Stockmen, rate \$4.72 a day, and the major portion of the work, about ninety per cent or more, required the handling of material from stock to car repairers at work on cars in the car-yard. The duties are more in line with those of Material Carrier than Stockman. The rate of \$4.32 a day is comparable with other clerks' positions of equal duties and qualifications.

As to the position working short time during a portion of the year 1938, it was entirely agreeable to the incumbent and had been a custom of some years standing at infrequent intervals, without complaint or protest and with knowledge of the General Chairman.

We submit that none of the employees involved have been mistreated in any way and, had they considered themselves mistreated, surely complaint would have been filed promptly or certainly before the lapse of several years after the alleged cause developed.

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 (1) that the Columbus and Greenville Railway Company, carrier, violated Clerks' Agreement by on May 6, 1932 temporarily abolishing the position of Stockman with a rate of \$4.32 per day at Columbus, Mississippi storehouse and by reinstating the position under the name of Clerk-Stockman on or about August 2, 1937 at the rate of \$3.92 per day for the position, and

(2) That the position was a full time one with a total of 177 working days during the period from January 1938 to July 1938, inclusive, but that the employe holding the position was only allowed to work 160½ days and that he was only paid for the time he was allowed to work contrary to the appropriate rule, and is entitled to additional compensation at the appropriate rate for the difference of 16½ days.

As to the first item of the claim little need be said. The controlling facts are the same in substance as in Docket CL-1650, Award No. 1839, except as to date of temporary abolishment of position and reinstatement and the rate of pay on reinstatement. Here the rate was \$3.92 since it came about before a general increase of 40 cents per day. The same Finding and Award must be made as there as to this item. The same principles are applicable and a like decision is indicated.

As to the second item there appears no dispute as to the controlling facts. The claim that the occupant of the position worked only 160½ days of the full time period of 7 months or 177 days has been sustained.

The rule that claimant insists was violated is Rule 65, and is as follows:

"Rule 65. Employees covered by these rules shall be paid on a daily basis. Nothing in the rule shall be construed to permit the reduction of days for the employe holding regular assigned positions covered by this Agreement below six (6) per week excepting that this number may be reduced in a week in which holidays occur, by the number of such holidays."

No exception contained in the rule is advanced as a reason for a reduction of the working days for this position, and the fact that the occupant did not protest, or that it was agreeable to him or even that the custom was known to the General Chairman and he did not at the time complain, if the reduction was brought about at the instance of the carrier, can furnish no justification for the violation of the rule.

The claim should be sustained in its entirety.

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 employe involved in this dispute are respectively carrier and employe 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 of violation has been sustained in its entirety.

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. 1842, DOCKET CL-1653

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