

Award No. 2037
Docket No. CL-2015

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(a) The carrier violated and has continued to violate the terms of the Current Clerks' Agreement when, on February 21st, 1940 it abolished the position of warehouse foreman at Lincoln, Nebraska, rate \$5.60 per day and in lieu thereof and effective the same date established position of checker, No. 19-7, rate \$4.80 per day.

(b) That the carrier shall now be required to restore the position of warehouse foreman and that the incumbent J. S. Layton be compensated the difference in wages, retroactive to February 21st, 1940.

EMPLOYEES' STATEMENT OF FACTS: On February 21st, 1940, position of warehouse foreman at Lincoln, Nebraska, rate \$5.60 per day, hours of assignment 8:30 A. M. to 5:30 P. M., one hour meal period, daily except Sunday and holidays, was abolished and in lieu thereof, position of Checker No. 19-7, rate \$4.80 per day was established, hours of assignment being the same—Bulletin N-1, dated February 29th 1940 reading—

"BULLETIN NO. B-1:

NORFOLK—February 29, 1940
.200.412-8

Clerks:
Freight Handlers:
Station Employees:

Effective February 21, 1940, position of warehouse foreman No. 16-90, Lincoln, Nebraska, John S. Layton, incumbent will be abolished.

The following vacancy is advertised:

LINCOLN:

Checker—No. 19-7, rate \$4.80 per day, 8:30 A. M. to 5:30 P. M., one hour meal period, daily except Sunday and holidays. Incumbent of this position will check and handle freight at Lincoln Freight house and perform other duties assigned by the agent.

Rates for clerical position will be paid clerks having two or more years clerical experience. Clerks with less than two years clerical experience will be paid the reduced rate applicable.

day and holidays, was established. J. S. Layton was the incumbent of position of Warehouse Foreman at the time it was abolished and made application to displace C. C. Thomas the incumbent of position of checker No. 18-7 at Lincoln, and also requested permission to work on Checker position No. 19-7 pending assignment on bulletin. Layton was the senior applicant for Checker position No. 19-7, and was assigned thereto by bulletin obviating the necessity of displacing Thomas.

Since the position of Warehouse Foreman was abolished the agent at Lincoln marks up outbound merchandise cars and makes loading list for billing, consuming approximately 15 minutes per day."

The above agreed-to joint statement of facts by representatives of the brotherhood and the railway company locally situated and in a position to definitely know the conditions, indicates conclusively that the only work formerly performed by incumbent of position classified as warehouse foreman and now performed by the agent which might in one sense be classified in the category of supervisory duties comprised marking up outbound merchandise cars and making loading list for billing, and it is agreed that the performance of such work consumed approximately fifteen minutes per day, so that, in fact, the sole question here involved is whether on basis of duties assigned to incumbent of position now classified as checker, such position is properly classified, or whether same should be classified as a warehouse foreman.

Some time prior to or about February 21, 1940 the freight house organization, Lincoln, Nebr., comprised nineteen employees, as follows:

1 Freight House Foreman	3 Callers
1 Delivery Clerk	3 Stowers
4 Check Clerks	7 Truckers

With the decline in business at Lincoln, Nebr., the force at that point was reduced to the extent that as of or about February 21, 1940 there were but two positions remaining, one classified as warehouse foreman, the other as checker, the duties of both positions being substantially analogous, with the exception that the incumbent of the warehouse foreman's position was required to take charge of the house and mark up outbound merchandise cars and make loading list for billing. In consideration of the fact there was no requirement for continuing position of warehouse foreman, the position was abolished by bulletin in accordance with rules applicable, and concurrent therewith and also in accordance with applicable rules position of freight house checker was bulletined, the incumbent of warehouse foreman's position when established exercising his seniority and displacement privileges, assigning himself to position of warehouse checker.

The rates of pay as established for warehouse checker are agreed-to rates of pay for that class of position at Lincoln.

POSITION OF CARRIER: It is the position of the railway company that claim of the employees as herein submitted is not justified nor supported by schedule rules or facts of evidence, and cannot properly be sustained.

OPINION OF BOARD: According to the record of this case, the position of Warehouse Foreman, abolished February 21, 1940, and thereupon superseded by a position of Checker, was restored on September 1, 1940, coincident with the abolishment of the Checker's position. The record further discloses that there was no substantial change in the number of employees engaged in the freight house nor in the duties performed on the position when re-established September 1, 1940, as compared to February 21, 1940, and to the period intervening between those two dates.

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 restoration of the position of Warehouse Foreman on September 1, 1940, with no substantial change in the number of employes and the duties of the position, as compared with those conditions on February 21, 1940 and with those of the period between those two dates, evidenced mutual understanding of the conditions requiring the Foreman's position on and subsequent to February 21, 1940.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1942.