

Award Number 3103
Docket Number CL-3033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the Clerks' Agreement:

(a) When it required and continues to require Arnold F. Fritz, Adolph J. Spiering, Louis F. Fritz and John Blonigen and/or their successors to perform services of Section Stockmen at St. Cloud, Minnesota Store, and fails to compensate them at the established rate for the classification of Section Stockman, retroactive to June 2, 1944,

(b) That the employes involved in this claim be compensated for full eight (8) hours, and any incidental overtime at the current established rate of pay for Section Stockmen for each day such service was performed at the St. Cloud Store, retroactive to June 2, 1944.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of October 1, 1925, as to Rules and Working Conditions is in effect between the parties to this dispute. Employes involved in this claim are covered by the Agreement. It has been a practice over the entire System of the Carrier's road in the Store Department, for some time past, to use any employe that they saw fit for periods varying from two to four days each month to perform work known as "stock taking." This work consists of counting material on shelves or platforms, and entering amount in stock books. The Carrier agreed, on July 1, 1944, (see Exhibit "C"), to discontinue the practice of using Material Handlers for this work.

POSITION OF EMPLOYES: Prior to November 15, 1942, the work in question was performed at St. Cloud Store by a Material Handler, but the employes protested, and claimed that this work should carry the rate of a Section Stockman, similar to positions that the Carrier had established at Dale Street Store, located in St. Paul, Minnesota.

On April 27, 1943, a representative of the Carrier and the General Chairman of the employes' Organization made a joint check of this work, (which we are entering as Exhibit "A"). This check proved to the Carrier that the employes' contention was correct, for on September 4, 1943, under File B-563, the General Storekeeper wrote the General Chairman as follows:

The employes listed in the Statement of Claim and who were used to make entries in stock books occupy positions as follows:

Arnold F. Fritz is a clerk;
 Adolph J. Spiering is a clerk;
 Louis F. Fritz is a store attendant;
 John Blonigen is a clerk;
 the name of John R. Schissel was included in error (see Joint Exhibit J-1 attached hereto).

Rule 51 of Agreement covering employes represented by the Brotherhood of Railway and Steamship Clerks provides:

"(a) Employes temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced."

This is qualified and defined by Paragraph (c) reading:

"(c) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work, irrespective of the presence of the regular employes. Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment."

The duties of a section stockman are, in general, as follows: He checks incoming material against invoices and all bills of lading and places material received on shelves or platforms in proper order, being responsible for a section of a storehouse or, in some case, for an entire storehouse. He selects from shelves or platforms material needed to fill shipping orders, also material required on requisitions for delivery to the shops or roundhouses; he packs material for shipment and attaches the necessary labels or shipping tags. He supervises the work of helpers or laborers who may be assigned to work with him; helps with the annual inventory and may participate in monthly stock taking.

With this explanation of the duties of a section stockman, attention of the Board is referred again to Paragraph (c) of Rule 51. Certainly the mere fact that an employe of some other classification may engage in stock taking two or three days per month does not make him a section stockman, since stock taking, where participated in by a section stockman, is only a very minor part of his over-all duties, and, as previously pointed out, in some instances may not be a part of his duties at all. Such being the case, it most certainly cannot be considered that because an employe, no matter what his classification may be, engages in stock taking this is a "fulfillment of the duties and responsibilities of the position during the time occupied." It is the position of the Carrier that Paragraph (c) of Rule 51 means exactly what it says and is not susceptible of misunderstanding, since the language of this rule is not in any way ambiguous or permitting of more than one interpretation.

It is, therefore, the position of the Carrier, since all of the employes used in making stock book entries in taking stock at St. Cloud occupy positions of a clerical nature and were not either material handlers or laborers, that it has not in any way violated either a schedule rule, an understanding, outside of the schedule or precedent in the use of these employes, and that there is nothing either in rule, precedent or otherwise which provides that the making of entries in stock books is the exclusive right of section stockmen, and requests that your Board will so hold.

OPINION OF BOARD: A Section Stockman is shown to be a clerical employe who is in charge of and responsible for a store house or a part thereof.

Generally, he receives, has custody of, and fills orders for materials. Incidental to the operation of that department of the Carrier's business, it is also necessary that the amount of materials on hand be determined and listed monthly in a stock book. At St. Cloud, this last mentioned function ordinarily requires from two to four days per month and the services of two employes, one of whom determines the quantity of the several items of material on hand, while the other makes a record thereof in the stock book. Formerly, these entries were made by available employes indiscriminately, but this practice was protested by the Organization and discontinued. A Material Handler who had previously performed such service was compensated therefor at the Section Stockman's rate and that work was thereafter assigned to Clerks who were compensated as such. The question here is whether those who have subsequently been so employed should have been rated as Clerks at \$7.24 per day or as Section Stockmen at \$7.64. The Carrier contends for the former; the Petitioner for the latter.

It sufficiently appears that the monthly stock taking at St. Cloud pertains to the functions of the Section Stockman. There are two details involved in that task—the counting, weighing and measuring of the materials on hand, and the making of a record thereof in the stock book. In Awards Nos. 2028 and 2226, it was held that the first of these activities might be performed by Materials Handlers. It follows, we think, that the making of the stock book entries pertained more directly to the Stockman's duties. This must have been the Carrier's understanding when it discontinued the use of Material Handlers for that purpose and compensated those who had served in that capacity at the Stockman's rate.

Though intermittently performed, the work here involved was not "due to a temporary increase in the volume of work," within the meaning of the concluding sentence of Rule 63. See Award No. 3032. That being true, the facts of the case bring the claim within that part of Rule 63, which reads:

"Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions."

The contention made on behalf of the Carrier to the effect that there is nothing in the Agreement that makes the taking of stock the exclusive prerogative of the Section Stockman and that its subsequent concession that no one below the classification of a Clerk would be used to make entries in stock books, does not suffice to dispose of the claim. If the Carrier's position is sound, it would have been justified in compensating the Material Handler who made entries in the stock book at the lower rates applicable to clerical employes. As already noted, the preponderance of the proof indicates that stock taking at the place with which we are here concerned was incidental to the duties of the Section Stockman. Whether that practice prevails at other points is not here in issue or necessary for us to determine.

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 employes involved in this dispute are respectively carrier and employes 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 Agreement.

AWARD

Claim (a and b) sustained for the four employes named in the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.