Award No. 3976
Docket No. MW-3914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated agreements of March 3, 1931, and January 6, 1932, by effective July 16, 1946, discontinuing the positions of Assistant General Foremen in the Chicago, Milwaukee, Twin Cities, Cedar Rapids and Sioux City Terminal Yards;

(2) That the several Assistant General Foremen assigned as such in terminal yards listed above shall be restored to their former positions as Assistant General Foremen;

(3) That the Assistant General Foremen in above listed terminal yards, whose position was improperly discontinued effective July 16, 1946, shall be paid the difference between what they received working in other classifications and that which they should have received at the rate of pay applicable to Assistant General Foremen retroactive to July 16, 1946.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1931, the Carrier maintained in its Chicago Terminal twenty-one section gangs and three small extra gangs. Effective as of January 1, 1931, these crews were combined into larger units, and effective March 1, 1931, all of the twenty-one sections and the three small extra gangs were combined into six larger terminal gangs, each being in charge of a general foreman. Under the terms of agreement entered into between the then General Chairman of the Brotherhood and the Carrier, copy of which is attached hereto as Employes' Exhibit "A", it was agreed that one assistant general foreman would be assigned to each of Gangs Nos. 8, 4, 5, 3 and 7.

Prior to February 24, 1931, the Carrier maintained in its Milwaukee Terminal, sixteen section gangs and two small extra gangs. Effective as of February 24, 1931, these gangs were reorganized and combined into seven terminal gangs. In negotiations between the Carrier and the then General Chairman of the Brotherhood, agreement was reached effective January 1, 1932, whereunder it was agreed and provided that in each of the gangs listed there would be assigned one assistant general foreman. Copy of this agreement is attached hereto as Employes' Exhibit "B".

Prior to April 1, 1931, the Carrier maintained in its Twin Cities Terminal, fifteen section gangs and one small extra gang. Effective April 1, 1931, fourteen of those section gangs and the small extra gang were combined into five

In other words, the Organization served notice of their desire to cancel the agreements and the Carrier acknowledged receipt of and advised that in view of the agreements having been cancelled, the standard rates of pay would be applied to all laborers in the gangs in the terminals covered by Carrier's Exhibits "A", "B" and "C".

The Carrier did not abolish the positions of assistant general foreman at the time the agreements were cancelled because of it being felt the positions were still justified. The positions of assistant general foreman were continued until July 16, 1946, when by reason of it being necessary to make force reductions these positions were discontinued. However, the Board will, we are sure, realize that so far as the positions of assistant general foreman in the Chicago, Milwaukee and Twin City Terminals are concerned, they were created as a part of the mentioned agreements with the Maintenance of Way Organization and when these agreements were cancelled, as per Carrier's Exhibit "D", these agreements became null and void and the Carrier was at liberty to discontinue the positions of assistant general foreman at any time.

So far as the positions of assistant general foreman at Cedar Rapids and Sioux City are concerned, there was no agreement covering these positions, except as indicated above, we had positions of assistant foreman and the Organizations requested that these positions be reclassified as assistant general foreman, which was done, but certainly it will be realized by all concerned that in so agreeing, the Carrier did not intend, nor could it be construed, that these positions of Assistant General Foreman at Cedar Rapids and Sioux City would be continued when there was no longer need for them.

Briefly it is the Carrier's position that:

1. The positions of assistant general foreman in the three terminals, i.e., Chicago, Milwaukee and Twin Cities, were created by agreement with the Maintenance of Way Organization. However, when the agreement creating these positions was cancelled by the Maintenance of Way Organization, then the Carrier was no longer obligated to maintain these positions of assistant general foreman.

2. Positions of assistant general foreman at Sioux City and Cedar Rapids were not created by agreement. Therefore, certainly the Carrier cannot be charged with violating any agreement when these positions were discontinued.

In view of the information herein contained, as well as that in various Exhibits introduced by the Carrier, the Board will realize the claims as covered by this submission are without merit and the Carrier respectfully requests that they be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: By letter agreements entered into by the Organization and the Carrier, a number of Assistant General Foreman positions were created for enumerated terminal and section gangs in the Chicago, Milwaukee and Twin Cities Terminal Yards. On request of the Organization after assignments of General Foreman were made in Sioux City and Cedar Rapids Yards, positions were rated as Assistant General Foreman at these places. On July 1946, the Carrier discontinued these positions and the Organization asserts that their discontinuance was violative of the letter agreements.

The record shows that the letter agreements contained a further understanding regarding the rate of pay of section laborers in the Chicago, Milwaukee and Twin Cities Terminal District. On April 1, 1940, the Organization gave a formal thirty day notice to the Carrier that the letters "limiting rates of pay applicable to section laborers" in the three designated terminal districts be cancelled. The Carrier acknowledged the right of the Organization to cancel the agreement limiting the rates of pay of section laborers at these points and adjusted the rates of these employes in accordance with the Organization's request. The positions of Assistant General Foremen were not mentioned in this correspondence and they continued to be in existence until July 16, 1946. The Carrier contends that the Organization's letter of April

1, 1940, had the effect of cancelling the whole of the letter agreements and that no enforcible contract for the continuance of the Assistant General Foreman's positions remained after that date. The contents of the correspondence of the parties and the subsequent conduct of each indicates that there was no intention on the part of either to abrogate that part of the letter agreements dealing with the establishment of the Assistant General Foremen positions at the Chicago, Milwaukee and Twin Cities Terminal Yards. Consequently, the discontinuance of these positions on July 16, 1946, was a direct violation of the binding portions of the letter agreements.

The positions of Assistant General Foremen at Sioux City and Cedar Rapids were not, however, established by specific agreement. On the representations of the Organization that they were performing work similar to that performed by Assistant General Foremen in Chicago, Milwaukee and Twin Cities Terminal Yards, the Carrier assigned them a similar rate of pay. The positions were not created by agreement and, consequently, they may be discontinued without negotiation with the Organization unless other contract provisions, not herein pointed out, prevent.

FINDINGS: The Third Divison 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 Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained as to positions created by letter agreements of March 3, 1931, and January 6, 1932.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.