

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (a) The Western Weighing & Inspection Bureau's unilateral action in abolishing, effective March 1, 1949, eight (8) regularly assigned positions of Coopers, rate \$258.72 per month, in the Fruit & Vegetable Department at Chicago, and concurrently therewith reestablishing each of the eight (8) positions at a rate of \$214.84 per month, was violative of the rules of our then working conditions agreement and Wage Agreement dated Chicago, October 9, 1947 with the Bureau, and

(b) That the involved employees, namely, J. Wierenga, T. Becvar, A. Fricke, P. Stefanoff, T. E. Kowitz, A. Schultz, W. Wolowiec and L. T. Bessell, be reimbursed for all wage loss sustained representing the difference between the salary paid to them each month, namely, \$214.84 and \$258.72 or \$43.88 each for the period March 1, 1949 to August 31, 1949, inclusive.

EMPLOYEES' STATEMENT OF FACTS: (a) On March 1, 1949 Management posted Bulletin No. 105 abolishing eight (8) positions of Cooper at Chicago with advice to the involved employees that the positions would be concurrently rebulletined. (Employees' Exhibit A.)

(b) On March 1, 1949, Management issued Bulletin Notice to the employees for applications and bids to each of the positions that were presumably abolished by Bulletin 105. Copy of Bulletin 106 which is representative of all bulletins covering the eight (8) involved positions is attached as Employees' Exhibit B.

(c) On March 12, 1949 Management issued "Notice of Bulletin" awarding the positions to the occupants of the positions prior to March 1, 1949. Copy of Bulletin No. 106-A attached as Employees' Exhibit C, this being representative of each of the bulletins for all of the eight positions.

(d) Management's action was promptly protested in conference with Management on March 4, 1949, as evidenced by my letter of March 5th to Manager Piehl. (Employees' Exhibit D.)

The matter was further discussed in conference with the Management on March 22, 1949 as evidenced by Manager Piehl's letter to me dated March 23, 1949. (Employees' Exhibit E.)

On April 6, 1949 Manager Piehl formally declined our request that the rate of pay attached to each of these positions as of February 28, 1949 be

In the absence of any rule guaranteeing an employee a certain number of days of work per week it is possible the Employees are attempting to rely on the fact that the eight (8) Coopers involved in the claim were paid a monthly rate. So there will be misunderstanding in that regard we should like to direct attention to the fact that at the time of the occurrence leading to the instant claim, there were many hourly rated employees in the employ of the Bureau. There can be no doubt about the fact that the Bureau was privileged to change the assignments of such employees in accordance with service requirements.

Another feature which should be brought to your attention is the fact that if any of the eight (8) Coopers involved herein were absent from duty, their compensation was based on the actual number of days in a particular month on which service was rendered. For instance, if they were off duty one day in a twenty-six day working month, they would be paid 25/26ths.

It is also contended the Wage Agreement dated October 9, 1947 was violated when after establishing a 5 day work week the monthly rate of the employees was changed from \$258.72 per month to \$214.84 per month, and in this respect it is our contention that there was no violation of the Wage Award Agreement.

The Wage Award Agreement provided that effective September 1, 1947 all hourly, daily, weekly and monthly rates of pay for employees covered by the Agreement will be increased fifteen and one-half cents (15.5c) per hour applied so as to give effect to this increase in pay irrespective of the method of payment.

The increase of 15.5c per hour was awarded to employees of this Bureau including the eight (8) Cooper positions, and the rate of \$258.72 applied to the employees only so long as they existed on a 6 day basis and when the positions were changed to a 5 day basis, the rate was adjusted accordingly.

We have shown that the employees had no rule guaranteeing a 6 day work week schedule and in the absence of such rule we considered it proper to change the work week from 6 days to 5 days. We also considered it proper to readjust the rate from \$258.72 to \$214.84 per month, in order to correspond with the change in the work week schedule.

It is the Bureau's position that there has been no violation of the rules of our working conditions agreement and wage agreement and that the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are that on February 18, 1949, the Market Service Association issued the following letter:

"IMPORTANT NOTICE

February 18, 1949

**TO EMPLOYEES OF
LOCAL NO. 703 HELP:**

It is now definitely decided that from now on and effective Saturday, February 19, 1949 the South Water Market will be closed all day Saturday. The market is to go on a five (5) day week. Positively no selling on Saturday.

The new labor contract calls for a forty-hour (40) week guarantee, with an eight-hour (8) day, and an increase of \$.38 across the board over the old contract.

There will be a general meeting of the market next week when all details will be discussed with the merchants.

A. G. Zulfer,
S. J. Schatz,
P. J. LaMantia,
Labor Committee."

As a result of the closing of the South Water Market on Saturday, the Western Weighing and Inspection Bureau issued Bulletin No. 105 on March 1, 1949, abolishing eight (8) Cooper positions. On March 1, 1949, Bulletin No. 106 was issued, covering Position No. 42—Cooper, rate of pay, \$214.84, comprehending five days of service per week, located at the Chicago Produce Terminal. On March 11, 1949, the former occupant of one of the abolished positions bid in this position and was awarded the position on March 12, 1949. The seven other positions involved were similarly advertised in Bulletins dated March 1, 1949, and applications for these seven positions were received and assigned. The new positions covered the same duties each day as the abolished positions, but were for five days per week rather than six days per week, and the new positions carried a salary of \$214.84 per month rather than \$258.72 per month because the service called for five days per week.

The Employees claim that the Bureau violated Rules 4(a) and 6(a) and (b) of the then working Agreement (effective July 1, 1945) and the Wage Increase Agreement dated Chicago, October 9, 1947.

From a careful reading of Rules 4(a) and 6(a) and (b), this Board can find no violation of these Rules by the Bureau. There is no guarantee of a six-day week in the July 1, 1945 Agreement.

As to the violation of the Wage Increase Agreement, it has been stated in Award 4494:

"The wage increase agreement effective September 1, 1947, provides in part:

'This agreement is in settlement of the dispute growing out of the notices served by the employees parties hereto on or about March 25, 1947, and shall be construed as a separate agreement by and on behalf of each carrier party hereto and its employees represented by the labor organizations described above; and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.'

It is the contention of the Organization that the language 'and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended,' has the effect of freezing the wage rate of positions within the wage increase agreement and, consequently, not subject to change by the Carrier except by negotiation * * * *. The position here involved is within the scope of the Clerks' agreement and consequently is subject to the provisions of the wage increase agreements. Award 3916.

The relation of the wage increase agreement to the pertinent provisions of the collective agreement therefore becomes of controlling interest. We think the quoted provision of the wage increase agreement means that the increase in wages therein provided for is to be maintained until changed by negotiation. This in turn means that a reduction in the increased rate of the position is prohibited when made for the purpose of defeating the wage increase. Therefore, where the duties and responsibilities of a position remain

substantially the same, the rate resulting from the wage increase agreements must be maintained.

On the other hand, if the duties and responsibilities of a position are materially reduced, the Carrier may upon proof of that fact, justify a reduction of the rate of the position. * * * * *"

The duties of these claimants were reduced by one day and the Bureau has so proven this fact. The Bureau did not, in order to defeat the Wage Increase Agreement or the rules of the then effective Agreement, reduce the monthly rate of claimants' positions, but due to the fact that the Market employees were on a five-day forty-hour week and the Market was to be closed on Saturdays (this was before the effective date of the forty-hour week for railroad employees under the Clerks' Agreement, which did not become effective until September 1, 1949), the monthly rate was reduced because the amount of service was reduced. The Bureau has acted within the intent and meaning of the then current Agreement and the Wage Increase Agreement when, as said in Award 4494, the relation of one to the other is considered. The Wage Increase Agreement did not purport to restrict the power of the Bureau to make salary adjustments based on changes in the duties of positions where such action, as in this claim, is not restricted by applicable provisions of the collective Agreement.

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 Bureau did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.