

Award No. 7351
Docket No. CL-7412

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, beginning February 18, 1952, when,

(a) It removed the work of verifying extensions and freight allowances on invoices from the position occupied by Mr. R. L. Moore, Accountant, Mechanical & Store Department, and assigned this work to employees totally excepted from the Agreement in the Purchasing Department, and,

(b) That Mr. R. L. Moore shall be compensated for 3 hours per week at the punitive rate of his position beginning February 18, 1952 and so long as this violation continues, and,

(c) That all other employees adversely affected by reason of this violation be compensated for wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 18, 1952 a part of the assigned duties of Accountant R. L. Moore was the "verifying extensions and freight allowances on invoices" at the Mechanical & Store Department. This work had been assigned to this position for more than 25 years.

Material received reports are made up immediately after the 7th, 14th, 21st, and 27th of each month and the invoices are then matched up with the received reports and extensions on invoices verified.

For the period June 1951 through February 1952 an average of 220 invoices per month were handled on the Accountant's position. This would average 55 per week for a conservative average of three hours work verifying extensions on these invoices each week.

On February 6, 1952, Mr. R. W. Harper, Auditor, wrote letter to Mr. G. B. Cumpton, Mechanical Superintendent, advising in part that effective February 15, 1952 "The Store Office will discontinue verifying extensions and freight allowances on invoices because this same verification is made in the Accounting Department."

ment. This is merely an allegation and is not supported by the facts of record.

As previously stated, the same class of work has been performed by the clerical force in the Accounting Department, and there was no reasonable justification for the same work to be performed in the Mechanical and Stores Department. This had the effect of duplication of work and for this reason the performance of the work in the Mechanical and Stores Department was discontinued. When doing so it did not have the effect of a removal of work. The work disappeared.

The employees in the Purchasing Department who are totally excepted from the agreement have not and do not now perform such service. In two or three instances the employees in that department noted an error in price on invoices and made the necessary corrections, which was proper under the circumstances.

In view of all of the facts and circumstances there is no schedule rule supporting the claim. Further, the claimant or other employees were not adversely affected by reason of this alleged violation, and the organization has failed to sustain the burden of proof as to Claims (a), (b) and (c).

The carrier relies solely on its rights and privileges to eliminate the duplication of this work or any other work where there is a duplication.

Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission.

All data submitted herewith in support of the carrier's position has been presented to the employees or their duly authorized representative and is hereby made a part of the matter in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: It is conceded in the record that prior to February 18, 1952, part of the Accountant's, (Mechanical and Store Department) assigned duties was "verifying extensions and freight allowances on invoices." It is also conceded the work was removed from that position, but the real question is whether the same work is in evidence in connection with the duties of another position.

The Carrier here is not at liberty to remove work at will from the Agreement it holds with petitioner, See Awards 7348, 7349, 7350, same property, same parties, same Agreement.

Work subject to the Agreement cannot be removed therefrom for purposes of having the work performed by those in "excepted" positions. See Awards 631, 751, 4370, 4642, to cite a few.

The facts concerning the transfer of work we find to be in dispute, and, here again, the Carrier has refused to lend its assistance to either its Employees or the Board to marshal facts decisive of the issue. Therefore, we must presume the facts to be as petitioner states them and sustain the claim in part. See Award 7350.

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 Agreement was violated.

AWARD

Statement of claim sustained as to (a) and (b) at pro rata rate. That part identified as (c) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.