

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

1) Carrier violated Clerks' Rules Agreement and Memorandum of Agreement between the General Storekeeper and the General Chairman dated April 25, 1951 when, effective March 1, 1953, it abolished the position of Division Storekeeper at Mason City, Iowa and established a position of Local Storekeeper in lieu thereof.

2) T. A. Richards, Division Storekeeper, Mason City, Iowa; M. F. Leighty, Local Storekeeper, Ottumwa, Iowa; Robert Lewis, Chauffeur, Ottumwa, Iowa, and Francis Reed, Counterman, Ottumwa, Iowa shall be compensated for all wage loss suffered during the period March 1, 1953 to February 26, 1954 which was the direct result of the Carrier's abolishment of the Division Storekeeper position at Mason City, Iowa.

3) T. A. Richards, M. F. Leighty, Robert Lewis and Francis Reed be reimbursed for all expense incurred which was the direct result of the abolishment of the Division Storekeeper position at Mason City, Iowa.

EMPLOYEES' STATEMENT OF FACTS: Under date of February 24, 1953, the General Storekeeper issued an abolishment notice advising that effective March 1, 1953, the position of Division Storekeeper at Mason City, Iowa, rate \$449.17 per month, occupied by T. A. Richards, would be abolished. Copy of this notice is attached as Employees' Exhibit "A".

Under date of February 26, 1953, the General Storekeeper issued Bulletin GSK-75 creating a new position of Local Storekeeper at Mason City, Iowa at a rate of \$16.3939 per day. Copy of that bulletin is attached as Employees' Exhibit "B".

Immediately following abolishment of the Division Storekeeper position, Employee T. A. Richards exercised seniority by displacing Local Storekeeper

in this case is an attempt to secure the Division Storekeeper's rate of pay for a Local Storekeeper's position which is supported only by the erroneous contention that the Carrier was without the right, which it has never contracted away, to abolish the then existing position and create, instead, a position of Local Storekeeper which is a classification within the scope of the Clerk's Agreement and is a classification to which the remaining duties and responsibilities of the position normally apply. We therefore respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner, in brief, contends that when on March 1, 1953, Carrier abolished the position of Division Storekeeper at Mason City, Iowa and established a position of Local Storekeeper in lieu thereof, at a reduced rate of pay, it violated a Memorandum of Agreement. Also cited in support of the claims is Rule 19, which reads:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work which will have the effect of reducing the rate of pay or evading the application of these rules."

That by reason of this violation Claimants made various changes in their employment status, all at a reduced rate of pay and reimbursement is claimed for such losses.

Respondent Carrier contends that it had the right to abolish positions under certain conditions and cites awards of this Division in support of this proposition.

Set out in the record is the Memorandum of Agreement above referred to. In brief it provides the Division Storekeeper title will be changed to Storekeeper at certain points and assigned at a certain rate of pay. One such point cited is Mason City, Iowa. Also that certain employees would man these positions and that if "for any reason any of the above named occupants should leave his respective position the status of that position will be changed and such position will be placed within the scope of the Rules Agreement * * *.

After abolishment of the position in question at Mason City, Iowa and after these claims came into being on the property Carrier returned Claimant T. A. Richards to the position at Mason City, Iowa as Storekeeper and Claimant Leighty to his former position of Local Storekeeper at Ottumwa and to their former rate of pay, but declined any payment for wage losses. This likewise applied to Claimant Lewis. It was alleged that as Claimant Reed's position was abolished on June 5, 1953 and as his former position was no longer in existence he was not returned to it.

It would seem under these facts that claim should be sustained to a certain extent.

The difficulty with Carrier's position as we view it is that it proceeded on the theory as a general proposition that it could abolish the position at Mason City, Iowa. However, in the instant situation it ignores the Memorandum of Agreement and the record shows that Claimant Richards did not voluntarily "leave his position" but was forced out of it. As we view the Memorandum of Agreement Carrier had bargained away the right to proceed as it did. See Award 5923 on the replacing of a former position.

Claim 1 should be sustained.

Claim 2 is sustained as to Claimants T. A. Richards, M. F. Leighty, and Robert Lewis. Claimant Francis Reed's claim is sustained to the time his former position was abolished June 5, 1953.

Claim 3 is denied as we find no rule of the Agreement which would permit such payment of expenses.

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 Carrier violated the Agreement in accordance with Opinion.

AWARD

Claim 1 sustained.

Claim 2 sustained in accordance with Opinion and Findings.

Claim 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1956.