

Award No. 10384

Docket No. CL-9909

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) Carrier violated rules of the Clerk's Agreement when they abolished position of Stevedore as of February 1, 1956 and thereafter required two Group 1, Check Clerks, to perform Stevedore's work thereby denying E. L. McLean, the senior employe the rights accorded him in our Agreement to perform such work; and

(2) That Mr. E. L. McLean be allowed compensation lost by appropriate order of the Board for all time lost as a result of this violation at the agreed upon Stevedore's rate of pay for February 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 1956, and all subsequent days he has been denied the right to perform such work. NOTE: Retribution to be determined by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: The Warehouse forces at Carrier's Evansville, Indiana, Freight Station consisted of the following positions prior to the date of this violation:

POSITION	OCCUPANT	SENIORITY DATES		
		GROUP 1	GROUP 2	GROUP 3
F. H. Foreman	Mr. J. E. Young	10/15/13	10/15/13	
Stevedore	Mr. E. Jackson	4/22/55		10/22/42
Stevedore	Mr. E. McLean			11/15/42
Check Clerk	Mr. T. Winternheimer	9/20/44		3/ 7/44
Check Clerk	G. Traub	5/ 1/47		4/27/44

It will be noted that Claimant, E. L. McLean is senior in service to the two Check Clerks listed and thereby should be entitled to Group 3, Stevedore work so long as their remains such work to be performed for the eight hours of the day.

OPINION OF BOARD: The issue here relates to the abolition on February 1, 1956 of one of two stevedore positions at the Carrier's Evansville, Indiana freight station. Claimant, who had approximately 14 years seniority in that position was furloughed as of that date.

Prior to February 1, 1956 the Carrier employed at the freight station, one foreman, two stevedores, and two check clerks. Due to a decline of business over the preceding year the Carrier abolished the Claimant's position. Because the Claimant could not read or write he could not qualify for first class seniority whereby he could take over a position as check clerk and hence he was furloughed.

The Organization maintains that on or after February 1, 1956 there was still full time stevedore work for two stevedores and the remaining checkers divided that work among them, performing it in addition to their other duties. The Organization asserts that the Carrier violated the Agreement when it abolished Claimant's position and distributed the trucking work among clerical personnel. The Organization also points out that separate seniority lists are kept for Group 1, 2, and 3 grades of Employees.

In Award No. 9047 where a truckers position was abolished and the work was distributed to clerical Employees this Board held:

"The difficulty with the Petitioner's position in the present situation is that it does not affirmatively appear either in the applicable Agreement or in custom or practice that the work of the Trucker position belonged exclusively to the incumbents of that position. The mere fact that Claimant may have performed Trucker duties over a long period of time does not give him the exclusive right to their performance. (See Awards 7954 and 7031.) Evidence submitted by the Carrier supports its assertion that even prior to Claimant's furlough on December 12, 1957, Class (a) employees were customarily called upon to perform trucking work at the Freight House.

"The Scope Provision of the Agreement defines a Class (a) employee as one who devotes at least four hours of his working day to clerical duties, and Class (b) employees merely as all other employees. There is no provision that Class (a) employees shall not do any trucking work and no rule prohibits the performance of manual work by Class (a) employees. In view of this situation, we can not find that trucking duties exclusively belonged to Claimant. On the contrary, in our opinion the controlling Agreement contemplates that Class (a) employees may perform some trucking and manual work.

"The fact that separate seniority rosters are maintained for Class (a) and Class (b) employees does lend some measure of support to the Petitioner's contentions. Yet, in our view, this circumstance is not sufficient to overcome the defect in Petitioner's position, namely, that no showing of a sharply defined job classification of trucker with exclusivity of work is established by the record."

Again in Award No. 7167 (Carter) this Board held:

"The Carrier insists that Group 2 employees do not have the exclusive right to perform all Waybill Assorting work. Rule 1 classifies the employees under the agreement into groups and Rule 2 defines

each group. Clerks are defined by Rule 2(a) as employees who regularly devote not less than 4 hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work. Rule 2 (c) defines Waybill Assorters as employees engaged in assorting waybills. It will be observed that while Rule 2 (a) does not specifically mention waybill assorting as an assigned duty of clerical workers, the rule does contemplate that they shall perform work other than that specifically assigned. If this were not so the rule would not contain the language 'who regularly devote not less than four (4) hours per day' to the clerical work specified in the rule. Since all work within the scope of the agreement is performed by the various classes of employees classified in Rule 1 and defined in Rule 2, it is clear that the agreement itself contemplates that a clerical worker doing 4 hours of work defined in Rule 2 (a) shall perform 4 hours of other work within the scope of the agreement. Under such a situation, the purpose of defining clerical workers in Rule 2 (a) is to identify the higher skilled employees for pay purposes and to preserve to that group the higher rated positions. It does not have the effect of giving them clerical work exclusively or of limiting them to the performance of that work only. Nor does the applicable rule purport to give Waybill Assorters the exclusive right to perform all of this lower rated work. It is true that seniority rosters are maintained in each group. As to Group 1 employees this is done in order to determine the order in which employees in this higher rated group may be cut off in force reduction and exercise any seniority rights they may have to the lower rated Group 2 positions. As to Group 2 employees the maintenance of a seniority roster serves to determine those in that group who are entitled to move up into the higher rated Group 1 positions when vacancies occur or additional positions are required in that group. We concur with the general views contended for by the Organization that employees on one seniority roster may not ordinarily be used to perform the work of positions whose occupants are on a different seniority roster. But when it is the clear intent of the agreement, as here, that higher rated employees on one roster may perform the lower rated work of employees on another roster, there is no violation of the agreement for them to do. Since Rule 2 (a) contemplates the use of clerical workers in lower rated work at their higher rate of pay, it cannot be said that their use in such work was for the purpose of absorbing overtime under Rule 30."

Under the principles laid down in those two holdings the Agreement was not violated.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.