

Award No. 10539

Docket No. CL-10319

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(EASTERN DISTRICT, BOSTON & ALBANY DIVISION)**

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

(1) Carrier violated the rules of the Clerks' Agreement when effective December 13, 1956, it abolished the positions of Storeman, hours 4 P. M.-Midnight and Storeman, hours 12 Midnight-8 A. M. together with necessary relief to cover these positions on a 7-day basis and effective December 14, 1956, it by unilateral action established the practice of regularly calling regularly assigned employees and/or furloughed employees to service for work periods of less than 8 hours, between the hours 4 P. M.-Midnight and 12 Midnight-8 A. M., and compensating them for actual time worked and did further violate the rules of the Clerks' Agreement when effective December 14, 1956, it issued keys to the Storeroom to employees not covered by the scope of the Clerks' Agreement in order that they might go into the Storeroom and draw out supplies in lieu of waiting for an employee to answer a regular call or in the event the supplies were needed before the employee could report and/or in the event the employee was not available for the call, that

(2) Effective December 13, 1956 and continuing in effect until such time as carrier corrects the violations, each affected employee and/or employees, as well as their successors, shall be compensated for all wage losses sustained, which includes employees required to displace on lower rated positions in other groups and also those employees who were furloughed due to being displaced, that

(3) Carrier shall be required to immediately return the work, which has been removed from the scope of the agreement, back to the scope of the agreement, and that

(4) Carrier be required to immediately re-establish the abolished positions.

Note: A joint check of the records will have to be made to determine the names of the employees involved in Item 1 above.

EMPLOYEES' STATEMENT OF FACTS: On December 7, 1956 notice was posted by Storekeeper H. L. Doughty, reading as follows:

"As of Thursday, December 13th, the following positions at Beacon Park Storeroom will be abolished:—

2 Relief Men

1 Storeman—Hours 4 P. M. to Midnight

1 Storeman—Hours 12 Midnight to 8 A. M."

On December 14, 1956, carrier instituted the practice of regularly calling regularly assigned employees outside their regular hours and/or furloughed employees to return to service during the periods 4 P. M.-12 Midnight and 12 Midnight-8 A. M. to issue supplies (Employees' Exhibit "H"—Page 1 and Employees' Exhibit "L"—Pages 1-3).

When carrier abolished the positions shown above, this left no employee under the scope of the Clerks' Agreement in the Seniority District involved on duty to issue supplies to the Deisel Shop forces who work around the clock 24 hrs. per day, 7 days per week.

Concurrently with the abolishment of the positions, carrier issued keys to the Enginehouse Foreman at Beacon Park and in the event supplies were needed quickly, the Foreman would go into the Storeroom and draw out the supplies before the employee who was called arrived and at other times, would draw out supplies instead of calling anyone.

After about two weeks, the employees involved could not continue to work their regular assignments and answer the many calls and they thereafter refused the calls.

As mentioned above, the Deisel Shop at Beacon Park is in operation 24 hours per day, 7 days per week. As the deisel locomotives arrived, they are inspected, serviced and repaired. Carrier is unable to predetermine just what materials will be needed for repairs and servicing. Prior to Dec. 13, 1956, carrier maintained 1-Storeman on each of the three tricks in the Beacon Park Storeroom for the purpose of issuing supplies as required by the mechanics and other employees at the Deisel Shop. However, effective Dec. 13, 1956, it abolished the two positions shown above and attempted to reduce an 8-hour assignment on a call basis.

Attached hereto is Employees' Exhibit "L"—Pages 1-29 inclusive which lists various items drawn from the Storerooms during the 4 P. M.-Midnight and 12 Midnight-8 A. M. periods from Dec. 14, 1956 thru March 10, 1957. It can be seen from this exhibit that supplies were drawn at various times during the respective periods which would have necessitated an employee being on duty 8 hrs.

Also, attached are Employees' Exhibits "A"-"K" inclusive wherein the claim has been handled properly with all concerned.

All data contained herein has been made known to the Organization, either in conference or in writing.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier on December 7, 1956 issued and posted a notice abolishing Storeman's position from 4:00 P. M. to Midnight, and from Midnight to 8:00 A. M., plus two relief Storemen in the Beacon Stores effective December 14, 1956. As a result of said action, the Carrier had no Employees for said shifts, and filled these positions which were required under the call provision of the Agreement. The Employees for approximately 4 days accepted calls and then refused calls because it interfered with their regular assignments.

At approximately the same time, the Carrier issued the Engine House Foreman keys to the storeroom so that the supplies could be obtained during the shift in question.

The Carrier raises a procedural question, i.e. the Organization did not file the claim on behalf of a specific named Employee.

The facts as presented herein indicates clearly and without any doubt that the Carrier knew the Claimants with certainty. All we have to do is examine Carrier's Exhibit No. 4.

"Beacon Park, Dec. 21, 1956

1-H-62.12

"Messrs:—J. J. McCarthy,
F. M. McCarthy,
N. H. Burt, Jr.,
J. E. Gerulskis,
R. F. Goelet,
A. L. Davidson.

"Gentlemen:

"The Management has deemed it advisable to set up a list of class 2 men available to be called if needed between the hours of 4 P. M. and 8 A.M. It is necessary to have direct phone contact to be eligible.

"Will you please answer this letter over your personal signature, below, if available.

"NAME	AVAILABLE	YES	NO
"/s/ John J. McCarthy			X

"H. L. DOUGHTY
STOREKEEPER"

"Beacon Park, Dec. 26, 1956

1-H-62.12

"Messrs:—Phillip Reed
Hecton Evans
Roy Mackenzie
James Wolfe
Donald Marston

"Due to the abolishing of the second and third tricks in the storehouse, will you please indicate by mark yes or no as to the question of your availability to be called for emergency during the above two shifts? Please sign your name with the return of this letter.

"NAME	AVAILABLE	YES	NO
"/s/ M. R. MacKenzie			No

"H. L. DOUGHTY
STOREKEEPER"

Similar Letters as set forth (supra) were sent to each individual named therein seeking their availability for the work on the two shifts in issue, and they all responded in like manner.

The purpose for this procedural requirement is so that the Carrier can identify the claimants and determine their availability for the work under the Agreement allegedly violated.

Carrier's Exhibit No. 4 dispels any doubt as to their identity and as to the fact that they are Storemen.

However, the evidence does not support their position that they were entitled to compensation because they were not available.

We believe that the Organization has proved by a preponderance of the evidence that they are entitled to the work in question subject to the call provisions of the Agreement, but the evidence further shows that the Carrier was within its managerial prerogative in abolishing the positions because practical operations did not require the operation of a full time Storeman during the tours of duty in issue. It was necessary because of economical reasons.

The work in question was within the scope of the Organization, and Carrier's conduct during this controversy indicates this.

We cannot observe any distinction between an emergency where Employees other than those within Scope Agreement perform the work and the absent Employees who are within the present Scope Agreement and is paid for a call, and the continuous sparse work that was performed by others outside of the present Scope Agreement during these controversial tours of duty.

Therefore claims 1, 2, and 4, are denied, and claim 3 is sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claims 1, 2, and 4 are denied pursuant to the terms of the Opinion, and claim 3 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of April 1962.