

Award No. 13261

Docket No. CL-13643

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5239) that:

1. Carrier violated the Clerks' Agreement when, effective September 30, 1961, it abolished all nine clerical positions in its Commissary Department at St. Louis, Missouri, and effective October 1, 1961, "farmed out" or contracted out the clerical work of ordering, stocking and disbursing foods, meats, beverages, linens and other dining car supplies for dining cars, grill cars and business cars, to the AA Hotel and Restaurant Supply Company and the Holloran Laundry Company, in violation of Rules 1, 2, 3, 4, 5, 6, 45 and related rules of the Clerks' Agreement;

2. Carrier shall be required to compensate claimants as follows, until the work here involved is returned to the scope and operation of the Clerks' Agreement:

(a) E. G. Gumpenberger, Stock Clerk, for 8 hours at the Commissary Storekeeper's punitive rate of \$4.41 per hour, amount \$35.28, for October 2, 1961, with claims continuing on same basis for claimant or his successor(s) for each subsequent work day, Monday through Friday.

(b) Robert G. Welp, Stock Clerk, for 8 hours at the Commissary Clerk's punitive rate of \$3.56625 per hour, amount \$28.53, for October 2, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Monday through Friday.

(c) Albert C. Workman, Bundle Wrapper, for 8 hours at Seamstress' punitive rate of \$3.49125 per hour, amount \$27.93, for October 2, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Monday through Friday.

(d) William T. Mason, Storehelper, for 8 hours at the Storehelper-Receiver's punitive rate of \$3.315 per hour, amount \$26.52, for

October 2, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Monday through Friday.

(e) A. E. Haverstick, Rest Day Relief Storehelper, for 8 hours at the Storehelper-Countermand's punitive rate of \$3.315 per hour, amount \$26.52, for October 1, 1961, with claims continuing for claimant or his successor(s) for each subsequent work day, Sunday through Saturday.

(f) Herbert O. Wynn, Chauffeur, for 8 hours at the Sub-Foreman's punitive rate of \$3.435 per hour, amount \$27.48, for October 1, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Sunday through Saturday.

(g) Joe Huggins, furloughed employe, for 8 hours at Chauffeur's punitive rate of \$3.3525 per hour, amount \$26.82, for October 1, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Sunday through Saturday.

(h) Ora B. Davis, Storehelper, for 8 hours at the Storehelper's punitive rate of \$3.315 per hour, amount \$26.52, for October 1, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Sunday through Saturday.

(i) Willie Harris, furloughed employe, for 8 hours at the Storehelpers' punitive rate of \$3.315 per hour, amount \$26.52 for October 1, 1961, with claims continuing on the same basis for claimant or his successor(s) for each subsequent work day, Sunday through Saturday.

3. Carrier shall be required to return the work here involved to the scope and operation of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On September 30, 1961, and for many years prior thereto, the Carrier maintained a Commissary Store Department at 605 Rankin Avenue, St. Louis, Missouri, where food stuffs, meats, beverages, linens and other dining car supplies were stocked and from which stock Carrier's dining cars were supplied.

Employes subject to the Clerks' Agreement performed the work of ordering the supplies in quantities, stocking such supplies in the Commissary building, filling orders or requisitions presented by dining car employes for such supplies and making delivery thereof to the dining car employes who picked them up at the Commissary Store.

This was quite a large operation, employing nine full time, regularly assigned employes, five days per week, and two Rest Day Relief Clerk positions, all subject to the scope and operation of the Clerks' Agreement.

That force, subject to the Clerks' Agreement, on and prior to September 30, 1961, consisted of the following:

Occupant and Title of Position	Daily Rate	Assigned Hours	Meal Period	No. of Days Per Wk.	Rest Days
H. O. Wynn Sub-Foreman	\$18.32	6:00AM to 3:00PM	11:00-12:00 Noon	7	Monday and Tuesday

in the exercise of due diligence subsequent to September 30, 1961.

OPINION OF BOARD: In this dispute, the Carrier discontinued the operation of a commissary store. Upon doing so, it abolished all of the positions which operated the commissary. Thereafter, a restaurant supply company delivered food and other supplies to the dining cars. A laundry company picked up soiled linens and such and delivered them after laundry to the dining cars.

There is no evidence in the record that the Carrier owned the supplies.

There is a long line of decisions of this Board which hold that the Carrier has the right to abolish the positions when the work is eliminated. The Carrier had the right to do so in this instance.

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 not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 5th day of February 1965.

LABOR MEMBER'S DISSENT TO AWARD 13261, DOCKET CL-13643

It is true that there was no evidence in the record that Carrier owned the supplies. It is equally true that this Board has held that a Carrier might abolish a position when the work has been eliminated.

Those truisms, however, neither correctly resolve nor do they begin to answer the most vital question raised by the facts of record in the case at hand.

The question was not one of "ownership" of supplies; neither was it whether Carrier could abolish positions when the work thereof was eliminated. Rather, the most vital question raised in this dispute was: "may the Carrier 'eliminate' the work of its own employees by contracting with others for its performance?" By resort to the truisms set out above, this most vital question was evaded.

The answer to that question, under the facts and circumstances presented in the record, clearly required that the Employees claim be sustained, not only

because outside contractors were employed, but also on the basis that a position under another craft and class, newly created, engaged in work formerly performed by Claimants. The work remained to be performed on Carrier's property and was required to be performed as a normal part of Carrier's operations. There was no exception urged by Carrier such as emergencies, lack of equipment or necessary personnell, and there could have been none shown. Claimants had satisfactorily performed this self-same work since it first arose. Carrier should not have been permitted to void the Agreement with its employes in the manner it here undertook.

In short, the wrong answer was arrived at because the wrong questions were considered paramount by the majority. Consequently, Award 13261 is in error and I dissent.

D. E. Watkins
D. E. Watkins, Labor Member
3-2-65