

Award No. 14157
Docket No. CL-15379

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**DULUTH, MISSABE AND IRON RANGE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5703) that:

(1) The Carrier violated the current rules and working conditions Agreement, particularly Rules 1, 4, 9, 25, 33 and 35, when on various dates commencing October 23, 1963, and thereafter on the dates claimed, duties which had been traditionally and customarily performed by the incumbents to clerical positions in the Carrier's Storehouse at Proctor, Minnesota, were performed by supervisory employees, or excepted employees of a different seniority district.

(2) The following listed claimants shall be compensated as stated on the dates claimed:

The claims of Burt J. Wixner, furloughed Stockman, for:

October 24, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with ½ hour for lunch, because of work of this Craft and Class being performed by Mr. Russel Anderson, the incumbent to an excepted position in Seniority District No. 1.

November 9, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with ½ hour for lunch, because of work of this Craft and Class being performed by Norman Downs, Purchasing Agent.

November 10, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with ½ hour for lunch, because of the work of this Craft and Class being performed by Norman Downs, Purchasing Agent.

The claims of Joseph J. Jugasek, Stockman, for:

October 30, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Norman Downs, Purchasing Agent.

November 1, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Louis Pelletier, Purchasing Department, Seniority District No. 1.

November 3, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with ½ hour for lunch, when work of this Craft and Class was performed by John Whalen, Director of Purchases and Stores.

November 4, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Norman Downs, Purchasing Agent.

November 10, 1963, for 5½ hours at time and one-half from 3:30 P. M. to 9:00 P. M. when work of this Craft and Class was performed by John Whalen, Director of Purchases and Stores.

The claims of Edwin F. Fahrm, Stockman, for:

October 30, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Louis Pelletier, Purchasing Department.

November 4, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Louis Pelletier, Purchasing Department.

The claims of Leslie J. VanDell, Stockman, for:

October 30, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Lloyd Sletten, Purchasing Department.

November 4, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by Lloyd Sletten, Purchasing Department.

November 10, 1963, for 5½ hours at time and one-half from 3:30 P. M. to 9:00 P. M. when work of this Craft and Class was performed by Norman Downs, Purchasing Agent.

The claims of Alfred R. Erickson, Stockman, for:

October 30, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by John Whalen, Director of Purchases and Stores.

November 1, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by John Whalen, Director of Purchases and Stores.

November 4, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by John Whalen, Director of Purchases and Stores.

The claim of Omar J. Ellofson, Stockman, for:

November 4, 1963, for 4½ hours at time and one-half from 6:00 P. M. to 10:30 P. M. when work of this Craft and Class was performed by M. G. Downs, Storekeeper.

The claim of Donald C. Berg, furloughed Stockman, for:

October 23, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with $\frac{1}{2}$ hour for lunch, when R. H. Powell, Stenographer, suspended his duties and performed the assigned duties of Stockman.

October 25, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with $\frac{1}{2}$ hour for lunch, when R. H. Powell, Stenographer, suspended his duties and performed the assigned duties of Stockman.

October 26, 1963, for 8 hours from 7:00 A. M. to 3:30 P. M. with $\frac{1}{2}$ hour for lunch, when work of our Craft and Class was performed by John Whalen, Director of Purchases and Stores.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a Storehouse facility at Proctor, Minnesota, where Store's records and stock are maintained for the operation of the Carrier's Railroad facility. Claimants are Seniority District No. 5 employees assigned to perform the various functions of this Craft and Class in the ordering and receiving, stocking, accounting for and dispersing of Store's materials or furloughed employees of Seniority District No. 5. The claimants are regularly assigned to 40 hour work weeks in Carrier's Stores facility, or furloughed employees.

This Carrier has historically and traditionally taken an inventory of Store's materials annually in the month of October and prior to the year 1963 all of the tabulation and record keeping necessary in the taking of the annual inventory has been performed exclusively by clerical employees coming within the scope of the Clerical Agreement.

During the taking of the annual inventory in the years prior to 1963, the regular Storehouse force, represented by this Craft and Class, performed the conduct of the annual inventory during their assigned work weeks and on an overtime basis in order that the work of taking of annual inventory might be completed.

In the conduct of the 1963 inventory, Carrier concurrently established a new Stores Accounting System and in the conduct of the inventory also changed the procedural methods of accounting which were to be applied. In the conduct of the 1963 inventory, supervisory personnel of the Carrier, and an employee of a different seniority district incumbent to an excepted position in such district, performed service incidental to the annual inventory during the regularly assigned hours of claimants, on the rest days of claimants and also after the regularly assigned hours of claimants.

Work performed by supervisory employees, or employees of other Seniority Districts, consisted of picking up of inventory cards, sorting of inventory cards, marking of material sections and marking of inventory cards, work which in past inventory at the Proctor Storehouse has been performed solely by employees of this Craft and Class to the exclusion of others.

Claims were instituted by claimant Burt J. Wixner for October 24th, November 9th and 10th, 1963, to Mr. C. W. Rosen, Payroll Accountant, (Employees' Exhibit A), and denied by Mr. Rosen on January 9, 1964, (Employees Exhibit A-1). Appeal was made on these claims to Mr. J. M. Whalen, Director of Purchases and Stores, on February 6, 1964 (Employees' Exhibit A-2) and denied by Mr. Whalen on February 11, 1964 (Employees' Exhibit A-3).

- (5) The Employees have submitted no proof to support their position in the instant case.

The Carrier has conclusively proven that there is no basis for these claims and respectfully requests that your Honorable Board find that the claims are without merit and deny them accordingly. (Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintains a Storehouse facility at Proctor, Minnesota, where Stores' records and stock are kept for the operation of Carrier's railroad facility. As a result of a decline in business at Two Harbors, Minnesota, the storehouse at Two Harbors was closed and consolidated with the Proctor storehouse. All materials from Two Harbors stores were transferred to Proctor Stores. Prior to the transfer the Carrier installed an IBM inventory card system replacing a manual inventory system used in former years. The time consumed in the taking of the inventory was from October 23, 1963, to November 10, 1963.

Claimants contend that the Carrier had taken an inventory of stores annually in the month of October and that, except for the supervisory work required, all of the physical work necessary in the annual inventory had been performed exclusively by clerical employees under the Clerks' Agreement.

At the outset Carrier controverts the contention of Claimants that the work of taking inventory at Proctor in 1963 was exclusively work belonging to clerical employees under the Clerks' Agreement and urges that the taking of inventory is not a part of the daily routine of the Claimants or any other employees subject to the Clerks' Agreement; that the Carrier has the absolute right to assign supervisors and excepted employees to perform the work in dispute such as the lining up of inventory cards, picking up inventory cards and checking them to determine that all bins have been inventoried, spot-checking inventory to verify the inventory and marking of bins; that the taking of inventory is not reserved to clerks nor referred to in the Scope Rule of the Agreement.

The Scope Rule of the effective Agreement is general in character and only names positions. It does not undertake to enumerate the functions embraced therein, the Claimants' right to the work which they contend belongs exclusively to them must be resolved from a consideration of tradition, practice and custom; and on that issue the burden of proof rests upon the Claimants. See Award 10604 (Dolnick). There are a countless number of Awards which adhere to this same principle.

In an early award, Award 2013 (Shaw) we observe the following declaration which is applicable to the matter now before this Board. "There is nothing in the rules to prevent the Carrier from using any or all of its employees in any capacity on the taking of an annual inventory." (Emphasis ours.) It is succinct and direct. The reasoning upon which this affirmation was based is set forth in some detail in the Award. It was followed in Award 3584—(Rudolph) and more recently in Award 11982—(Rinehart).

The principle announced in Award 2013, to our knowledge, has never been overruled nor rejected in any subsequent award, and as there is close similarity of the issues in this case to those involved in the prior Awards cited herein the Board is convinced they should be controlling here.

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 has not been violated.

AWARD

Claims denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.