

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Clerks' Agreement at McComb, Mississippi, beginning April 1, 1953, when on or about March 31, 1953, it abolished position of Warehouse Foreman, paying \$307.92 per month on date of abolishment, and concurrently therewith established a position of Warehouse Clerk paying a basic rate of \$12.48 per day (which at that time the rate was subject to Cost-of-Living Adjustment), and

2. Claim that the Carrier be required to increase the rate of pay attaching to said Warehouse Clerk's position at McComb, Mississippi, in the amount of \$1.03 per day (exclusive of any general pay increases that have been granted in the interim by virtue of agreements reached by overall national handlings), and

3. Claim that R. M. Wilson, and/or any other employee involved in or affected by the agreement violation, be reimbursed in the amount of \$1.03 per day from April 1, 1953, until the violation is corrected by the proper adjustment in the rate of pay attaching to said Warehouse Clerk's position at McComb, Mississippi.

NOTE: Proper reparation due to be determined by joint check of Carrier's pay rolls, time book records, etc.

OPINION: The issue in this case involves the right of the Carrier to abolish the position of warehouse foreman at McComb, Mississippi, under circumstances hereinafter related:

Prior to August 27, 1947, the supervision of the warehouse was performed by Mr. Page who was fully covered by the terms of the Telegraphers' Agreement. On the above date, the Carrier, by agreement through its Superintendent and the Division Chairman of the Clerks' Organization, established the position of warehouse foreman on a monthly rate.

On January 30, 1953, the General Chairman of the Clerks' Organization demanded that the 1947 agreement be cancelled and abandoned. On March 23, 1953, the Carrier notified the General Chairman of the Clerks' Organization that it was agreeable, effective March 31, 1953, to cancel the 1947 agreement.

On the above date the position of "warehouse foreman" was abolished and a position of "warehouse clerk," fully covered by the rules of the Clerks' Agreement, was established. On December 10, 1953, the claim here involved was presented and channelled through the various sources until it has reached this

Special Board of Adjustment No. 170.

It is urged by the Carrier that the claim was not properly presented under the Time Limit Rule then in effect. The rule relied upon reads as follows:

"(a) Disputes arising out of claims and/or grievances or out of interpretation and/or application of agreements concerning rates of pay, rules or working conditions between the parties hereto, may be handled only by the employee affected or by one or more duly accredited representatives; provided, they are first presented in writing to the employing officer within thirty (30) days of occurrence.

"(b) If the decision of the employing officer is unsatisfactory, it may be appealed in writing by the duly accredited representative to the first appeal officer within thirty (30) days and thereafter in the regular order of succession up to and including the highest officer designated by the Carrier to whom appeals may be made."

It appears that the alleged violation occurred March 31, 1953, and was not presented to the Carrier until December 10, 1953, approximately nine months subsequent to the date of its actual occurrence. It is an established fact that no complaint was made as to underpayment for the position until approximately nine months after the first violation. Had the violation, if any, ceased to exist at that time, then the rule cited by the Carrier would come into full force and effect, but in the case at bar the violation was continuous. We hold that where the violation is continuous, the rule relied upon by the Carrier has no application.

The facts show that a "warehouse foreman's" position was established July 16, 1947, and discontinued March 31, 1953, by consent of the Carrier and the Organization. The vacant position was filled by the establishment of a position known as "warehouse clerk" at a lesser monthly rate of pay. While it is an established fact that the amount of work has lessened, still there remains certain supervisory work under the direction of the "warehouse clerk." We cannot agree with Carrier that the position of warehouse clerk is a new position. It is a new position in name only. The action of the Carrier in the instant case was in violation of Rule 61. Claimant Wilson is entitled to an award based upon the amount \$1.03 per day from and after April 1, 1953.

FINDINGS: The Special Board of Adjustment No. 170, after giving to 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the agreement was violated.

AWARD: Claim sustained.

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/s/ Edward M. Sharpe
Edward M. Sharpe - Chairman

/s/ R. W. Copeland
R. W. Copeland, - Employee Member

/s/ E. H. Hallmann
E. H. Hallmann - Carrier Member

Chicago, Illinois
June 17, 1958
(Date)