

Award No. 3177
Docket No. 2948
2-CRI&P-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Laborers were improperly used to clean Feed, Flour and Grain cars at the Carrier's West Yards, Council Bluffs, Iowa, on the dates of March 30, 1957 and April 9, 11, 12, 23, 25 and 26, 1957.

2. That accordingly the Carrier be ordered to compensate Laborer H. (Koenig 8 hours' pay at the time and one-half rate for March 30, 1957, Laborer Wayne Henningsen 8 hours' pay at the time and one-half rate for each of the dates of March 30th and April 9th, 1957, Laborer K. L. Frazier, 8 hours' pay at the time and one-half rate for each of the dates of April 9 and 23, 1957, Laborer H. J. Nichols 8 hours at the time and one-half rate for each of the dates of April 9 and 23, 1957, Laborer P. M. Taylor, 8 hours at the time and one-half rate for each of the dates of April 11, 12, 25 and 26, 1957 and Laborer Tom Shoemaker 8 hours at the time and one-half rate for each of the dates of April 25 and 26, 1957.

EMPLOYEES' STATEMENT OF FACTS: For many years the Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, maintained all of their mechanical department facilities at Council Bluffs, Iowa in what is now known as the West Yards. More recently the carrier laid out a new yard and trackage approximately one mile east of the old facilities and moved their mechanical facilities, (diesel dept., car repair and etc.) into the new location. However, the carrier has maintained, in part, the old yard (West Yards) and do use them, which is evidenced by this dispute.

POSITION OF CARRIER: The specific defined duties of laborers are not outlined in any rule of their agreement. The employees cannot contradict this fact. The agreement does list "car yard laborers" but here again no defined duties or work are specifically allocated to such laborers. (See Award 1596-Second Division). In addition, in this case, these cars were not cleaned in any car yard at Council Bluffs but were cleaned outside of any such car yard where no mechanical department employees are employed.

It has been the past practice on this property, in such instances as the present case, to contract cleaning of cars, to use section laborers or other employees, such as station employees, to clean them. Cleaning or sweeping of freight cars is not a monopoly of shop laborers. The employees in progressing the claim on the property have not produced and, furthermore, cannot produce any rule of their agreement outlining any specific work to be allocated to mechanical department laborers, nor any rule in their agreement which writes sweeping or cleaning of freight cars into a scope rule. Hence, there was no violation of their agreement.

It is noted employees ask for penalty payment. Without relinquishing our position, as above, we submit that in line with awards of this and other divisions of the National Railroad Adjustment Board, in event there is found to be a violation of the agreement, pro-rata rate only is proper.

For the above reasons, we respectfully request your Board to deny the claim of the employees.

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This docket advances claim for named laborers at time and one-half on specified dates when cars were cleaned by other than laborers at Council Bluffs, Iowa, in the old yards west of the depot where claimants had been employed until the train yard operation was moved to the new yards just east of the depot.

On claim dates it is shown that carrier contracted out the cleaning of grain cars. Later the cars were inspected by carmen forces from the east yards where claimants were currently at work.

It is fundamental that work covered by a contract with employees cannot be contracted out to others. We have previously ruled with this referee, in Award No. 3136, in a dispute between the present parties, that where regularly employed carmen cleaned cars incidental to their own task that the rules did not make the work exclusive to laborers, therein following our Award No. 2845 to the same effect.

The present case is distinguished from those because here the work was contracted out and workers who are not employees cannot be said to have

any right to do incidental work. Any work done by such contract people was purely laborers work and in derogation of the claimant's contractual rights as car yard laborers.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1959.