Award Number 180
Docket Number CL–129

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL SYSTEM

DISPUTE.—"Claim is made for the restoration of positions of Perishable Freight Inspectors and coopers performed by Illinois Central Employes prior to August 3, 1933, and subsequently turned over to the Western Weighing and Inspection Bureau, also for wage loss sustained by Thomas Cody, Inspector; Harold E. Richards, Inspector; John Kelleher, Inspector; Dave Denham, Inspector; Robert Barnes, Clerk; John T. Murphy, Cooper; George Lanham, Cooper; Loyce Crocker, Cooper; Frank Cervenka, Cooper; Mike Crisham, Cooper; W. N. Boyett, Cooper; Martin Chisinski, Cooper; T. L. Flake, Cooper; Pat O'Brien, Cooper; James Morrow, Cooper; George Doyle, Cooper; J. McMahon, Cooper; M. Brown, Jr., Cooper; J. Hart, Cooper; D. Mullins, Cooper; J. Brose, Cooper; F. Doherty, Cooper; William Skinner, Cooper; on account of being laid off all due to turning over Perishable Inspection and cooperage works to the Western Weighing and Inspection Bureau."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employes involved in this dispute are respectively carrier and employes 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.

The parties to said dispute were given due notice of hearing thereon.

This case being deadlocked, Wm. H. Spencer was called in as Referee to sit with the Division.

HISTORY OF DISPUTE.—Prior to July 1, 1933, the Illinois Central System had maintained its own perishable freight inspection and cooperage service at South Water Street, Chicago, Illinois. In passing, however, it is noted that prior to the date in question the carrier had employed the Western Weighing and Inspection Bureau to inspect its egg shipments.

The employes involved in the present dispute had, prior to July 1, 1933, performed the inspection services for the carrier herein, and their positions had been under the operation of an agreement between the Brotherhood of Clerks and the Illinois Central System, bearing effective date of September 1, 1927.

On July 1, 1933, the carrier, without giving formal notice of its intended action to the Brotherhood of Clerks, transferred to the Western Weighing and Inspection Bureau, all of its remaining perishable freight inspection and cooperage service, excepts its inspection service in connection with watermelon shipments. The change in question was made in pursuance of a formal or informal agreement which this carrier had entered into with certain other carriers having terminals in Chicago.

In the execution of the plan, the Illinois Central System transferred to the Bureau, four inspectors whom it had previously employed; it abolished the positions, respectively, of four inspectors, one clerk, and nine coopers, occupants of which exercised their seniority rights and displaced other employes; and permanently laid off nine coopers.

The Western Weighing and Inspection Bureau was originally organized by certain carriers, including the Illinois Central System, in 1887. Continuously since that time down to July 1, 1933, the Bureau had performed some inspection for the cooperating carriers. On that date, the Bureau took over practically all of the perishable freight inspection and cooperage services for the carriers in question at the South Water Street markets.

The carrier states in its submission to the Division "that the Western Weighing and Inspection Bureau is an agency of the railroads, consisting of a manager and other necessary forces who, for this purpose are paid wholly by the railroads on a monthly salary basis for all services rendered." The Bureau administers its own payroll, and assigns its inspectors and coopers to the various cooperating carriers as the needs of the service require.

The carrier in its submission set forth the reason or reasons which impelled it and the other carriers to centralize their inspection and cooperage services in the Bureau. In 1932, the loss on carloads of fruit and vegetables on western railroads, as reflected by payments for damages, amounted to approximately 50% of the total loss on all commodities, although fruits and vegetables constituted only about 3% of the total car loadings of the railroads in question. Because of this condition, the carriers concluded that it was "incumbent upon them to devise ways and means of improving the situation in this respect." After mature consideration, they were convinced that "to bring about the desired results, one of the first things to be done was to develop uniformity in inspection and cooperage service." Since it was impracticable, if not impossible, to develop the requisite uniformity so long as the various services were performed individually by the carriers concerned, they decided that the services should be centralized in some one organization or bureau. This led them to the adoption of the Western Weighing and Inspection Bureau which was an existing agency and which had been performing inspection and cooperage services for one or more of the cooperating carriers.

RESPECTIVE POSITIONS OF PARTIES.—The petitioner contended that the carrier removed the positions in dispute from the Clerks' Agreement in violation of Rule 64. This rule provides:

> "This agreement shall be effective as of September 1, 1927, and shall continue in effect until it is changed as provided herein or under the provisions of the Transportation Act, 1920.
>
> "Should either of the parties to this agreement desire to revise or modify these rules, 30 days' written advance notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon."

The carrier contended that in the adoption of the economy measures under consideration, it acted entirely within its rights under the Agreement between the parties.

OPINION OF THE REFEREE.—The Referee cannot agree with the contention of the carrier that there is nothing in the Agreement between the parties which prohibits it from turning over "its perishable freight inspection and cooperage work to a railroad bureau which it is customary to do." This contention ignores two basic facts. In the first place, it ignores the fact that the existing agreement, when negotiated, embraced all of the positions involved in the present dispute. In the second place, it ignores the fact that the first sentence of Rule 1 of the Agreement definitely states that "these rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below." This language, fairly construed, most certainly prohibits the carrier from removing positions from the operation of the Agreement except in the manner therein provided. If the language in question does not impose this restrictive obligation upon the carrier, then, indeed, the whole agreement is meaningless and illusory.

The petitioner, in support of its position, called the Division's attention to certain decisions of the United States Railroad Labor Board in which that Board discountenanced the practice of "contracting out work" by carriers in violation of collective agreements. (See No. 982, May 9, 1922; No. 1077, June 24, 1922; No. 1262, October 6, 1922; and No. 2080, January 19, 1924.) The petitioner called particular attention to Award No. 351 of the First Division of the National Railroad Adjustment Board in which that Division decided that it was in violation of the agreement between the Louisiana & Arkansas Railway Company and the Brotherhood of Locomotive Engineers for the carrier to assign to an independent contractor, the work of running engines on certain construction work which it was then performing.

The carrier, however, contends that the decisions cited are not controlling in the circumstances of the present dispute. It asserts, in the first place, that it has no contract with the Western Weighing and Inspection Bureau. It may be admitted that in a strict legalistic sense there is no contract between

the carrier and the Bureau. This, however, is immaterial. The fact remains that the carrier voluntarily removed work from the scope and operation of the Clerks' agreement without discontinuing it.

In the second place, the carrier places considerable emphasis upon the fact that the Bureau "is not an outside agency in any sense"; that it is a "railroad bureau maintained by the railroads." It may not be an outside agency as to the whole group of railroads concerned, but it is an outside agency as to the Illinois Central System with which the Brotherhood of Clerks has an agreement covering the positions in question.

The conclusion is inescapable that the Illinois Central System, in violation of Rules 1 and 64 of the Agreement between it and the Brotherhood of Clerks, removed the positions in dispute from the scope and operation of the Agreement and transferred them to the Western Weighing and Inspection Bureau, an outside agency so far as the carrier herein is concerned.

In arriving at this conclusion, the Referee does not challenge the good faith of the carrier in doing what it did. In fact, he was considerably impressed by the carrier's statement of the need and opportunity for economies in the performance of the activities in question. These considerations, however, should have been addressed to the Brotherhood of Clerks in accordance with the provisions of Rule 64.

AWARD

The claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 24th day of January 1936.