Award Number 191
Docket Number TE-139

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY
FORT WORTH AND RIO GRANDE RAILWAY COMPANY
ST. LOUIS-SAN FRANCISCO RAILWAY

DISPUTE.—"Claim of the General Committee of The Order of Railroad Telegraphers that employees covered by Telegraphers' Schedule shall not be required to personally load cotton."

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

The carriers and the employees involved in this dispute are respectively carriers and employees 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 the said dispute were given due notice of the hearing thereon.

There is an agreement between the parties hereto, bearing date of May 16, 1928.

This dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

The lines of the respondent carriers traverse the cotton-growing sections of the Southwest. At approximately 250 stations these carriers receive and load baled cotton for shipment to other points. Each bale weighs about 500 pounds, is bulky, and not easily handled. The season during which cotton is shipped runs from September to the following April. The principal part of the shipping, however, occurs during the months of September, October, and November.

Prior to November 1930 the carriers had as a general rule authorized station agents to engage extra help to load cotton at their various stations. The record, however, contains some evidence tending to show that prior to the date mentioned a few station agents had been required to load cotton as a part of their regular duties. Moreover, the carriers introduced in evidence bulletins and communications, running back as far as 1915, tending to show that they had assumed that they might when necessary call upon agents to load cotton.

In November of 1930 the carrier issued instructions with respect to the practice of employing extra help to load cotton. There is, however, a sharp conflict of evidence as to the contents of the instructions. The petitioner states:

> "Beginning November 1930 the carrier issued instructions to agents to discontinue the employment of outside labor for this purpose and directing agents to personally load cotton at their stations during their assigned hours."

The carriers give this as their version of the instructions:

> "In November 1930 the Management advised the Superintendents that many agents were undoubtedly employing outside labor to load cotton, when station force had plenty of time to load it and might as well do the work themselves and save the Company this money; that they should have station force load cotton wherever they could."

Whatever may have been the contents of the instructions issued in November 1930, the record clearly indicates that since the date in question the amount of cotton loaded by Agents has increased very substantially. On the other

hand, the record indicates that the carrier has since 1930 expended some money in the employment of outside help to load cotton.

In support of its claim, the petitioner contended that there is nothing in the Agreement between the parties which permits the carrier to require such burdensome services of agents.

The carrier contended that it was justified in requiring this service of agents because there is nothing in the Agreement which prohibits it from doing so.

CONCLUSIONS OF THE DIVISION.—Section 1 of Article I of the Agreement between the parties, in the statement of positions covered by it, furnishes a general definition of the services which the carrier may require of the occupants of the various positions. This general definition, however, may be limited or extended by other rules in the Agreement. In the present agreement, for instance, Article IV must be read in connection with Article I.

The definition must also be interpreted in the light of prevailing practices. The carrier may require of agents and telegraphers not only services which are strictly peculiar to such positions, but also such services as in terms of prevailing practices are fairly incidental to them. It is not denied that the loading of freight is incidental to the position of an agent. It follows that the carrier is entitled to require the agent to perform a reasonable amount of such service. In spite of the fact that the carriers herein had not prior to 1930 required agents to load cotton, it does not seem to the Referee that the loading of a reasonable amount of cotton is entirely foreign to the position of an agent.

In an individual situation, the requirement of loading cotton, in addition to the agent's other duties, may, of course, become unreasonable and burdensome. In this event, it would seem to the Referee that the employee would have just cause for complaint. In view of all the circumstances, however, this Division does not feel justified in placing an interpretation upon Article I of the Agreement which would absolutely and unconditionally prohibit the carriers herein from requiring agents to load any cotton.

AWARD

The claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 6th day of February 1936.