# NATIONAL RAILROAD ADJUSTMENT BOARD
## Third Division

I. L. Sharfman, Referee

**PARTIES TO DISPUTE:**

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

**THE COLORADO AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM.—

"Request that all work contracted to the Burlington Refrigerator Express Company, and formerly assigned to, and performed by, employes coming under scope of Agreement between The Colorado and Southern Railway Company and that class of employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, be restored and re-assigned to said employes."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"On October 1, 1932, The Colorado and Southern Railway Company entered into an arrangement with the Burlington Refrigerator Express Company for the handling of all refrigerator and heater service. This necessitated the Burlington Refrigerator Express Company taking over all the work which heretofore was performed by Colorado and Southern employes, coming under the scope of the Clerks' Agreement, in connection with the icing of refrigerator cars, handling of heaters, and records, etc."

POSITION OF EMPLOYES.—The employes contend that this arrangement with the Burlington Refrigerator Express Company, an outside agency, for the handling of refrigerator and heater service theretofore performed by the Colorado and Southern employes constituted a violation of the agreement of July 1, 1924, between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and the Colorado and Southern Railway Company, which was operative at the time of the dispute and placed in evidence in this proceeding, in that it was made in contravention of Rules 1, 3, 55, 63, and 70 of this agreement, which rules provide as follows:

RULE 1. These rules shall govern the hours of service and working conditions of the following employes of The Colorado and Southern Railway Company, subject to the exceptions noted in Rules 1, 4, and 8.

(1) Clerks, Ticket Clerks, and Ticket Sellers, except those whose positions are included in the Telegraphers' Agreement.

(2) Other office and station employes—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

(3) Laborers employed in and around stations, store houses, and warehouses.

NOTE.—This agreement shall not apply to individuals where amounts of less than Thirty ($30.00) Dollars per month are paid for special services which only takes a portion of their time from outside employment or business or to individuals performing personal service not a part of the duty of the carrier.

RULE 3. *Seniority.*—(a) Seniority begins at the time employe's pay starts on the seniority district and in the class to which assigned.

(b) Where two or more employes enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective rank of such employes.

(c) Employes now filling or hereafter promoted to positions listed in paragraph (a) of Rule 4 shall retain their rights and continue to accumulate seniority in the district from which promoted and in case of demotion or displacement may exercise their seniority in the district from which promoted. The right of an employe holding an excepted position to exercise seniority in accordance with this section does not apply when charged with an offense likely to result in dismissal. When charged with such offense, the carrier will proceed under the provisions of the discipline and grievance rules.

RULE 55. *New positions.*—The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. If no position of similar kind or class exists in the seniority district where created, comparison shall be made with positions in other seniority districts.

RULE 63. *Rates.*—Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.

RULE 70. *Duration of agreement.*—This agreement shall be effective as of July 1, 1924, 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, thirty (30) days written advance notice containing the proposed changes, shall be given and conference held on date mutually agreed upon.

All schedules and agreements previously in effect are hereby cancelled.

POSITION OF CARRIER.—The carrier contends that these rules of the agreement with its employes create no bar to its contracting with an outside agency for the handling of refrigerator and heater service theretofore performed by employes embraced in that agreement. Thus: "The schedule provides for working conditions of employes of the Carrier. It does not guarantee that all work of the Carrier will be performed by clerks in its employ and has never been so understood or construed." Again: "As previously stated, the schedule that we have with the Brotherhood of Railway Clerks governs the working conditions of employes carried on the payrolls of the C. & S. and does not prohibit the C. & S. from having its work performed by other railroads, bureaus, or agencies." The carrier also argues that its participation in arrangements with outside agencies in other spheres, chiefly in connection with joint agencies maintained by groups of railroads, establishes the propriety of the arrangement with the Burlington Refrigerator Express Company, and that in any event no reduction of Colorado and Southern forces resulted from this arrangement.

OPINION OF BOARD.—On the basic issue as to whether the operative agreement between the carrier and its employes leaves the carrier free to farm out work covered by that agreement and previously performed by employes falling within its scope, this Division has on various occasions spoken in no uncertain terms in support of the position of the employes. In Award 180, Docket CL–129, Referee Spencer said: "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." In Award 323, Docket CL–311, Referee Corwin, in speaking with approval of the principle involved in the above Award 180, said: "The reasoning of the various awards cited by the employes * * * affirms the principle that any work necessary in performing the functions of a common carrier belongs to such classes of employees as are protected by its collective agreements with them. If the carrier could farm out any part of the labor necessary to its operations it could arrange with others to do a large part or all of it, impairing the rights of its employees to handle the jobs which the entire spirit and intent of the agreement assures

them. The difference would only be one of degree. So long as the work exists in the prosecution of its business, it is theirs under the schedules, and such is the meaning and effect of seniority." Finally, in Award 331, Docket CL-342, rendered as late as November 9, 1936, in which Referee Corwin participated, it was said: "This division has repeatedly held that if employees are deprived of service which had been and in the usual course of the carrier's business should be theirs, that their rights remain except as they may be modified through negotiation." These were all Clerks' cases and the holdings contained therein represent the considered judgment of this Division. The soundness of the principle thus established and affirmed has also been recognized in awards rendered by the U. S. Railroad Labor Board and by the First Division of this Board. Under the operative agreement and the circumstances disclosed of record, resort must be had to negotiation for the introduction of such arrangements as may be deemed to be in the interest of economy or efficiency.

There is a conflict of evidence as to whether the transfer of work to outside agencies in other connections was effected by the carrier without protest from the employes, or with the acquiescence of the employes after conference with the carrier and the safeguarding of their interests. It is clear, however, that neither in intent nor in actual effect were the provisions of the agreement revised in any way by such prior violations of its terms as may have occurred.

The fact that the claim in dispute involves only work at Denver and that no specific positions were shown to have been abolished is immaterial. The remedy sought—that the work formerly rendered by the carrier's employes falling within the scope of its agreement be restored and reassigned to them—is no more extensive than the violation charged and established.

FINDINGS.—The Third Division of the Adjustment Board, after giving 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 the employes involved in this dispute are respectively carrier and employes 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 removal of the work in question from the scope of the agreement in effect between the parties constitutes a violation of that agreement, and particularly of Rules 1 and 70 thereof.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
*Secretary*

Dated at Chicago, Illinois, this 21st day of January, 1937.