

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM.—

"Claim of Class No. 3 and Class No. 4 employes, Store Department, to have positions of scrap cutters on the 'swamp tracks' at Silvis, Illinois, bulletined and assigned as per the provisions of working rules agreement effective January 1, 1931, and addenda thereto effective January 30, 1933, and reimbursement for monetary loss sustained since April 22, 1936, account failure to so bulletin and assign such positions."

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

"It has been the practice in the past to use Mechanical Department employes to dismantle cars and locomotives at various points over the railroad. Scrap and useable material from the dismantled equipment was loaded in cars and generally shipped to the Silvis store at Silvis, Ill. After arrival at Silvis store this material and scrap has been, if necessary, cut up by the use of 'scrap cutters' located on the scrap dock, into saleable scrap and the useable material reclaimed. The scrap cutters at Silvis scrap dock are seniority Class No. 4 and covered by working rules agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

"About the middle of March 1936, a change in the method of handling these dismantled cars was inaugurated. Under the present system, equipment to be dismantled has been sent to Silvis, Ill., and a force of employes assigned to dismantle the cars, cutting the scrap into saleable lengths and reclaim the useable material. This work is being done on what is known as the 'swamp tracks,' located about one-fourth of a mile from the Silvis scrap dock. Shop laborers at rate 41 cents per hour, under supervision of a carman or a foreman, have been utilized for this cutting. Scrap cutters on the scrap dock in the Store Department are paid 55 cents per hour. On April 22, 1936, employes' committee representing the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes made formal complaint about the use of shop laborers in handling work of scrap cutters and scrap sorters at the swamp tracks."

There is in evidence agreements between the parties hearing dates of January 1, 1931, and January 30, 1933.

POSITION OF EMPLOYES.—

"The employes contend that the work of cutting up scrap after it has been removed from cars and locomotives by Mechanical Department employes is covered by our Working Rules Agreement effective January 1, 1931, and addenda thereto effective January 30, 1933. The fact that the work is being done at the swamp tracks in our opinion should not operate to remove this class of work from the Agreement. This class of work has been performed by scrap cutters on the Silvis scrap dock for fifteen years or

"Attention is here directed to the fact that it was not until January 1933 that Scrap Department scrap cutters were mentioned in connection with the clerks' agreement, while the contract with the shop employes has for many years evidenced the right of the shop employes to dismantle equipment and, likewise, handle and cut scrap when necessary.

"Mechanical Department employes are not now doing work which they have not previously performed when the dismantling was handled in the field; they are, however, in some cases, cutting the scrap into smaller sizes.

"There has been no change insofar as the Store Department scrap cutters are concerned. They are and will be used to cut any scrap which may be sent to the Store Department scrap dock.

"There has been a re-arrangement of work which has resulted in a heavier volume of such work going to the mechanical department at Silvis, and a consequent lesser volume going to the store department.

"Two facts must not be forgotten:

"1. The work of cutting scrap is not done on what might be called 'Store Department property.' The swamp track is about one-quarter to one-half mile from the store department scrap dock.

"2. On the swamp track is carried out an integrated continuous process or operation. Equipment is in one place, and by one class of employes—Shop Craft employes—reduced to scrap in saleable form.

"Briefly, the situation presented to your Board here is that the mechanical department schedule provides for dismantling of equipment and cutting up of scrap by mechanical department employes and until such material is delivered to the Store Department for handling, the store department employes are not involved. Under the present method of handling neither the shop contract nor the clerical contract is being violated, and the employes under each contract are performing the same work as has been done by them for a considerable length of time; the only difference is one of volume.

"To now decide that Store Department employes are entitled to all scrap cutting work will involve a controversy with our shop craft employes."

OPINION OF THE BOARD.—In the claim of the employes, Store Department, to have positions of "Scrap Cutters" on the "Swamp track" bulletined and assigned as per the provisions of working rules agreement effective January 1, 1931, and addenda thereto effective January 30, 1933, the facts are evidenced that, while an agreement existed between the employes and the carrier for the cutting of scrap at a specified rate by employes of the Store Department of the carrier at the Silvis store scrap dock, much of the work formerly performed by the employes of the Store Department at the Silvis Scrap Dock was transferred during April 1936 to what is known as the "Swamp Track" at Silvis, where the cutting of scrap is performed by employes of the mechanical department of the carrier at a lesser rate of pay than that paid to the scrap cutters of the store department at the Silvis Dock.

It is the contention of the employes that the carrier violated the rules of the agreement by removing the positions or work from the scope of one agreement, and assigning such work or positions to employes coming within the scope of other agreements.

The carrier submits that its agreement was with the Scrap Cutters employed by the Store Department at the Silvis Scrap Dock and that the work of cutting scrap at the Swamp Track (a point about a quarter of a mile from the Silvis Dock) was performed in connection with the dismantling of equipment by employes of the mechanical department and is covered by agreement with the crafts in that department.

From the facts in evidence it is the opinion of the Board that, inasmuch as an agreement existed between the carrier and the employes of the Store Department at the Silvis Dock, such change as was made by the carrier in transferring the preparation or cutting of scrap to employes of the Mechanical Department at a nearby location should have been made a matter of negotiation between the parties to the agreement, and that the transfer or removal of the work of scrap cutters from the Store Department at the Silvis Dock to another class of employes in a different department but in the same vicinity, without such negotiation, constituted a violation of the spirit of the existing agreement between the parties.

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 facts of record constitute a violation of the existing agreements by the carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 30th day of August, 1937.