

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

**GULF COAST LINES—INTERNATIONAL—
GREAT NORTHERN RAILROAD COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY CO.

STATEMENT OF CLAIM: "Request of employes that position classified by the Company as Dock Agent at Corpus Christi, Texas be bulletined and filled in accordance with the rules of the agreement: that a rate of pay be established in accordance with the agreement, and that employes who have been affected by refusal of the carrier to so bulletin and fill this position be compensated for all losses sustained."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 1, 1936 the carrier used so-called extra labor to check freight at the Docks. For this service of checking freight the man was allowed 2 hours per car at a rate of 55¢ per hour. The last employe to work under these conditions was a Mr. Barron, whose father is the Agent at Corpus Christi.

"On May 1, 1936 the carrier discontinued the use of so-called extra labor, and established a position under the title of Dock Agent, rate \$50.00 per month. The carrier established this position, created a rate and filled the position without regard to the rule of the Clerks' agreement.

"On August 1, 1936 the Organization protested this action of the carrier, asking that the position be bulletined and filled under the agreement, and that proper rate of pay be applied to the position—calling the carrier's attention to the fact that a similar position, Dock Agent at Houston, Texas, was covered by the agreement.

"The carrier declined to grant the request of the organization, stating that it was a part time position and could not be satisfactorily filled by a clerical employe."

CARRIER'S STATEMENT OF FACTS: "We have a position at Corpus Christi wharves called Dock Agent. The position works irregularly and his duties are those of a contact man between the steamship companies and the Railroad. He is employed exclusively on Water Front."

satisfactorily performed by clerical employees is not borne out by the actual facts in the case. Exhibit 'A' gives this Honorable Board the facts concerning the regularity of the work and, as shown by that exhibit, the work is not of the irregular nature that the carrier indicates.

"The carrier's contention that the position is such that few, if any, of the clerical force could handle the work (See Exhibit B) refutes itself when one considers the salary paid—\$50.00 per month.

"When one considers the situation as a whole it must be clear that the action of the carrier is prompted by their desire to avoid payment of proper wage, payment of overtime and assignment of proper person to the position.

"The employees contend that the carrier has violated or disregarded Rules 1, 2, 4, 5, 6 (a), 10, 19, 54, 61, 65, and 68 and, inasmuch as these rules were violated, the position should be bulletined and filled in accordance with the agreement, and request your Honorable Board to sustain our claim."

POSITION OF CARRIER: "Article 1, of Agreement with Clerks' Organization, covers scope of same and sets out title of positions covered.

"Under the heading of 'Exceptions' Paragraph 'a' reads as follows:

"This agreement shall not apply to employees on coal and ore docks; or employees on elevators, piers, wharves, or other water front facilities; or to individuals where amounts of less than \$30.00 per month are paid for special service which takes only a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of carrier, such as "Red Caps", "Travelers Aid" etc."

"It will be clearly seen from above quoted rule that the position complained of, namely Dock Agent, is excluded from the terms of this Agreement and no basis can exist for their request that position be bulletined in accordance with Clerks' Agreement and that all clerical employees who have suffered a loss in pay be compensated for such loss.

"In addition to calling attention to the fact that the position is excluded from the terms of Agreement, it is further desired to bring to your attention the nature of the service performed by this position. The work of Dock Agent at Corpus Christi is of an entirely different nature to that performed by regular clerical forces at station and in yards. The Dock Agent is really a contact man, or 'go-between' the Steamship Companies and the Railroad and requires a man particularly fitted for such work. The position could never be satisfactorily filled by bulletin, as very few, if any, of the clerical forces have any idea or conception of the work performed by Dock Agent. The work performed by the position is very irregular and would all be performed by extra men if placed under Clerks' Agreement, as position only works on days when there is a ship loading or unloading, to or from which lading is being loaded for our Line. This fact alone precludes the placing of position under Clerks' Agreement; therefore, Carrier requests that the Board recognize the fact that present Clerks' Agreement excludes the position and that the nature and duties of position and irregularity it works, prevents the successful handling of work under Clerks' Agreement and that request in its entirety be denied."

OPINION OF BOARD: This case involves a sharp conflict on the question of fact. There are few statements in the record relating either to facts or argument upon which the parties agree.

The petitioner, in his ex parte submission and rebuttal argument, states and contends that the dock agent is not exclusively employed on the waterfront, and that he performs the following duties: checks the freight from the warehouse into railroad cars, and from railroad cars into the warehouse;

checks freight transferred from ships into cars direct without being handled through the warehouse; checks freight from cars spotted on team track; makes necessary record and report of information necessary to transporting of and accounting for revenues accruing on interchanged freight; arranges for necessary number of cars for freight received from steamship companies; that he devotes not less than four hours a day for the majority of the working days of the month to the performance of clerical work; that the position of dock agent at Corpus Christi is within the scope of the current agreement, and that the provisions of Rules 1, 2, 4, 5, 6 (a), 10, 19, 54, 61, 65, and 68 are being violated by the carrier.

The carrier contends that the dock agent is exclusively employed on the water-front facilities, which are owned and operated by the Corpus Christi Navigation District, and states that when this port was opened some ten years ago each of the rail lines operating into Corpus Christi deemed it advisable to have a contact man at the port for the purpose of securing unrouted business; that at that time it employed such a man, who was given an allowance of two hours at 55 cents an hour for each car checked, his average earnings approximating \$50 a month. This arrangement continued until the man thus employed died in the early part of 1936.

The carrier also states and contends that on May 1, 1936, it established position of dock agent at a salary of \$50 a month, with the same duties as previously performed, it being considered preferable to carry the man on a monthly allowance rather than on the extra labor roll; that the man appointed as dock agent is secretary of the longshoremen's association, and is employed by the stevedoring company on the wharves; his time is carried by the stevedoring company, and approximately all the checking he does for the carrier is done during his tour of duty with the stevedoring company; that all freight is checked by the Navigation District's force or the stevedore checkers, and practically the only checking done by the dock agent is for exceptions on outbound freight which is not routed when received in the warehouse on the water-front and on which he has secured routing for the Missouri Pacific Lines; that the only checking of inbound freight is where a car has been in an accident or bad order after interchanged, when the dock agent inspects for exceptions.

The carrier denies that the dock agent performs any service off the water-front, and also denies the allegation of the petitioner that the dock agent handles orders for cars or placement, but states that car orders are handled by the agent's force and the yardmaster's force direct with the force of the Navigation District or the steamship companies, and contends that the position is one excepted under the EXCEPTIONS provisions of Article I, Rule 1, of the current agreement.

The Board should not be called upon to decide between two such widely conflicting claims concerning facts, and believes the parties can supply it with more definite evidence, and consequently rules that the case should be remanded to the parties to develop the actual facts through joint investigation. Since the facts were not determined in conference between the parties on the property, it may be that the matter will dispose of itself upon the proper determination of the facts by the parties. Otherwise, the parties may bring the case back with the fact clearly developed.

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 employees involved in this dispute are respectively carrier and employees 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 dispute be remanded to the parties for a joint check to develop the actual facts of the case upon which a decision may be predicated, in the event agreement is not reached to dispose of it on the property.

AWARD

Case remanded in accordance with Opinion and Finding, with permission to resubmit if either party desires to do so.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1938.