

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(1) The action of the Midland Valley Railroad Company in employing others not covered by our schedule agreement to load, seal and make record of cars of potatoes loaded at Alta Vesta Switch, (which is located in the Muskogee Yard District) is a violation of their schedule agreement rules; 1, 2, 3, 4, 5, 8, 10, 12, 32, 41, 53 and principle 7, which is printed on page 23 of our agreement which is part of our present agreement, and

"(2) Claim that such work is subject to the scope and operations of our agreement and that employees J. S. Bynum and C. A. Malone, Yard Clerks, entitled to perform such work shall be paid for wage losses suffered as a result of Carrier having assigned such work to a non-employee on the dates herein specified in our statement of facts."

There is in evidence an agreement between the parties bearing effective date of June 14, 1921.

EMPLOYEES' STATEMENT OF FACTS: "Henry Radcliff, (a negro sometimes employed by the Brown Produce Company) was hired by the Midland Valley Railroad Company, to load, seal and make seal record of cars of potatoes loaded by shippers at Alta Vesta Switch for which services he was paid 25 cents a car by the Midland Valley Railroad Company, during the month of June 1938.

"He loaded during the month of June and July 1938:

June 15, 1938—2 cars	June 23, 1938—5 cars
June 16, 1938—3 cars	June 24, 1938—4 cars
June 18, 1938—1 car	June 25, 1938—3 cars
June 20, 1938—3 cars	June 30, 1938—4 cars
June 21, 1938—5 cars	July 1, 1938—1 car
June 22, 1938—5 cars	

"After sealing and making seal record of seals applied to the cars he then turned over to the Agent his record, at which time he was paid.

"Alta Vesta Switch is located in what is known as the Muskogee Yard proper, and is in the Seniority District known as the Muskogee Station and Yard.

"Records at Muskogee Station and Yard office show that the work of taking seal records, applying seals on cars and making seal record has

"Nor is there any justification for contending that two particular regularly assigned clerks have exclusive rights to perform service at a point remote from their place of duty, and at which there is no work for them to perform.

"Both of these clerks were junior to other clerks who if required for this service would be available. Neither of them holds rights of any kind to the exclusive performance of any service not embraced in their regular assignment and as provided by the agreement.

"It is the universal practice for shippers to apply their own seals on cars loaded by them if they so desire. When it is necessary or desirable for the carrier to apply seals to a car, it is not work belonging exclusively to clerks, as this may be done and is done by agents, conductors or others, as the case may be. That part of the 'Statement of Claim' referring to the loading of cars must be disregarded, as obviously the carrier does not load carload shipments and could not possibly do so as the tariff requires that all carload shipments be loaded by the shipper.

"Likewise, that part of the statement of claim which refers to 'make record of cars' must be disregarded, as no such record was made or required to be made by the carrier. And even if so made it would not have represented work belonging exclusively to yard clerks located at a train yard 5.2 miles from this point.

"The employees in their 'Statement of Claim' cite a number of rules in the agreement, none of which have any application to this matter. They also cite Principle 7, set out on page 23 of the agreement, which has no bearing on the matter. However, it might be well to consider the application of Principle 9, set out on the same page.

"Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission."

OPINION OF BOARD: It is claimed that the Carrier violated the Agreement by employing one Henry Radcliff to load, seal and make seal reports of potatoes loaded at the Alta Vesta Switch, a side track located about five miles from the Muskogee Train Yard. The Carrier admits that it provided a non-employee with seals and paid him at the rate of 25¢ per car for applying the seals. During the potato season, to-wit: in June, 1938, a shipper was loading potatoes at the Alta Vesta Switch. The season covered a period of 16 days during which time seals were applied to 40 cars by Radcliff, for which work he was paid the sum of \$10.00, or 25¢ a car. After the cars had been moved from the switch track to the train yard, yard clerks covered by the Clerks' Agreement made a record of the car numbers and the seals applied to the cars. The record shows that Radcliff was not paid for loading the cars; that they were loaded by the shipper; nor did he keep a seal record such as is required to be maintained for record purposes. This is shown by the fact that the first car was loaded on June 15 and the last one on July 1, 1938, and it was not until the following day that Radcliff reported to the Agent that the cars had been sealed. In other words, a period of 17 days elapsed between the time that the first car was sealed and the Agent was informed of the sealing. Radcliff presented the Agent with a piece of paper upon which he had written the numbers of the cars and the seals used. This record was not used by the Agent but was filed as evidence of the correctness of the payment made by him to Radcliff.

What Radcliff really did was to seal the cars, and the question that confronts us is does that constitute a violation of the current Agreement between the Clerks and this Carrier.

A careful reading of the current Agreement involved in this case convinces us that there is nothing in the agreement that could possibly be construed as justifying the contention that sealing cars at Alta Vesta Switch under the particular circumstances set forth in this record was work which had to be done exclusively by the Clerks.

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 Carrier did not violate the current Agreement as contended by the Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1941.