

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Request that practice of using others than those covered by the Clerks' Agreement to perform oil house duties be discontinued and that the two senior laborers at Grand Junction, namely, Mr. Lumbard and Mr. Allen, be paid the difference between store laborer's rate of pay and store helper's rate of pay for each day this oil house work is performed by employees holding no seniority rights thereto.

JOINT STATEMENT OF FACTS: At Grand Junction, Colorado, a new oil house was constructed and placed in service on or about March 22, 1941, and under method of handling oil and grease since that date Messrs. Lumbard and Allen contend their seniority rights are being violated account not assigned to this work. Claim, as above stated, was denied by the Management.

POSITION OF EMPLOYEES: Prior to March 22, 1941, the entire handling of the oil house at Grand Junction Store was done by Store Department helpers coming under the scope of Rule 1 of the current Agreement; also of the Agreement in effect prior to June 1, 1941. Rule 1 provides, in part as follows:

"These rules shall govern the hours of service and working conditions of the following employees, subject to exceptions noted below:

Group 1. CLERKS.

- (a) Clerical workers.
- (b) Machine operators.

Group 2. Other office, store and station employees, such as office boys and messengers; train and engine crew callers; telephone switchboard operators; office, store, station and warehouse watchmen and janitors; power truck motormen; Store Department truck drivers used in Store Department work, including operators of mechanical lifting devices used in and around freight stations and storehouses; Store Department helpers; Reclamation Plant helpers when operated by Store Department; employees engaged in sorting coupons, tickets, way-bills, and cut up car records; stowers, callers, loaders and coopers.

Group 3. Station, platform, warehouse, transfer, storeroom, stockroom, house and team track freight handlers and truckers.

The only change in handling, other than the supplymen getting oil at a different location as explained above, is that in the old location barrels of various sizes and capacities were used for storing oil from which the supplymen drew their oil as needed. This storage was filled by store helpers. In the new location tanks of various sizes and capacities are used for storing oil from which storage supplymen draw their oil as needed. This storage is filled by store helpers.

The carrier cannot conceive that drawing oil from modern storage tanks rather than from barrels in any way violates the clerks' agreement or in any way affects the seniority rights of employees covered by that agreement. Furthermore, in numerous discussions of this case, as well as correspondence in connection therewith with the organization, there has been no specific citation of any rule violations.

OPINION OF BOARD: This record involves a dispute over the handling of certain oils and grease. The claimants contend that the oil and grease involved are store materials, and, under the scope rule of the agreement should be handled by storekeepers. The carrier contends this oil and grease, at the time it is taken from the oil house, has lost its identity as store material, that it has been delivered and charged out to the Mechanical Department and is subject to being handled by that Department. There is an entire absence in the record of any supporting facts for either contention. Neither does the record indicate with any certainty the difference in handling before and after the construction of the new oil house. It does appear that mechanical department employees now have access to the new oil house, while, under the arrangement prior to this new construction and changed method in handling, these employees were required to have a store helper open the house where the oil was stored. In view of the fact that some changed method in handling this oil and grease was inaugurated with the construction of the new oil house, this fact, that mechanical department employees now have access to the new oil house, cannot, standing alone, support this claim.

Any award made upon the meager facts presented by this record could be based upon nothing but conjecture and guess.

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 record is not sufficient upon which to base an award other than a dismissal.

AWARD

Claim dismissed without prejudice to the right to file a new claim and fully develop the facts.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1942.