

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee

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 COMPANY**

(Guy A. Thompson, Trustee)

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

- (a) The carrier is violating the Clerk's Agreement by requiring or permitting employes of the San Antonio Joint Car Interchange Association to perform work covered by the Clerks' Agreement. Also
- (b) Claim that the work in question be assigned to and performed by employes holding seniority rights and working under the Clerks' Agreement. And
- (c) Claim that all employes involved in or affected by this agreement violation be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: Effective with the close of business April 17, 1923, two transfer clerks' positions were abolished and all of their work turned over to employes of the San Antonio Joint Car Interchange Association.

The duties of the transfer clerks were to check and make proper records and reports on all cars passing through the transfer, take and record seals, inspect, record and, when necessary manipulate ventilation devices on perishable freight, inspect and make proper reports and records on livestock and all other clerical work that might be necessary in connection with cars moving through the transfer.

All of the duties formerly assigned to and performed by the transfer clerks are now assigned to and performed by the employes of the San Antonio Joint Car Interchange Association.

POSITION OF EMPLOYES: The employes quote the following rules from our current agreement in support of their position:

"On going into the matter further, I am unable to find where there is any necessity for employing clerks at San Antonio to help the Joint Inspectors, who are employed by all lines, although carried on the I-GN payrolls."

According to the records of the Carrier, the matter was not referred to again until August 10, 1939, when the following letter was addressed to Mr. W. G. Choate, General Manager by Mr. J. L. Dyer, General Chairman BRC:

"During 1937, we exchanged some correspondence in connection with employes of the San Antonio Car Interchange Association performing clerical work that should be assigned to employes working under our Agreement.

"I want to discuss this matter with you again at our next conference."

On August 11, 1939, the General Chairman was advised by the General Manager that he would be glad to discuss the matter with him. Conference was held on July 23, 1940, and Mr. Dyer, General Chairman, was advised by Mr. Choate, General Manager, on July 24, 1940, as follows:

"As stated to you in conference yesterday, in my Office, we are not agreeable to assigning clerks to perform the work now being performed by the San Antonio Car Interchange Association."

On April 1, 1941, further conference was held in connection with the case and no settlement having been reached, General Chairman requested that the Carrier join him in submitting the case to the National Railroad Adjustment Board. He was advised that if the proposed statement of facts presented at the conference, after having been given consideration, was acceptable, or, if not, an agreed statement of facts could be reached, the Carrier would be agreeable to joining him in submitting the case. Statement of facts could not be agreed to whereupon the General Chairman of the Organization submitted the case ex parte to your Honorable Board. Following this contention of the Carrier with respect to the case as submitted:

- (a)—That the clerical work now being performed properly devolves upon employes of the San Antonio Joint Car Interchange Association and is not work which is covered by the Clerks' Agreement.
- (b)—That for reasons stated in (a), the work in question should not be assigned to or performed by employes who hold rights and work under the Clerks' Agreement.
- (c)—There has been no claim presented to the Carrier by any employe coming under the scope of the Clerks' Agreement that he should be compensated for all losses sustained.

In fact, it is the contention of the Carrier that inasmuch as the work being performed by the employes of the San Antonio Joint Car Interchange Association properly devolves upon them, that employes coming under the Agreement with the Brotherhood of Railway Clerks, International-Great Northern Railroad, are not entitled to perform the work, which was recognized by the representatives of the employes for a period of approximately 13 years or from 1923 until 1936 and for more than two years, April 19, 1937, to August 10, 1939.

In view of the evidence as submitted in this case, your Honorable Board is respectfully petitioned to deny the claim of the employes.

OPINION OF BOARD: The facts in this case are not in dispute. In 1922 an association known as the San Antonio Joint Car Interchange Association was formed consisting of a number of railroads entering San Antonio. The

object of the association was to handle the interchange of cars in that area. Joint car inspectors were maintained on interchange tracks who kept a record of the time cars were placed, made inspections, kept a record of all cars interchanged and made minor repairs. On April 18, 1923 two positions known as Transfer Clerks were abolished and the work was turned over to the association. May 10, 1923 a letter was written by the representatives of the employees which claimed that this action was a violation of the agreement in that work belonging to employees under the agreement had been given to outsiders. A reply to this letter was sent May 16, 1923 in which the carrier claimed that it was within its rights in turning over the clerical work to the car inspectors. May 19, 1923 another letter was sent for the employees by the general chairman setting forth the views of the employees and requesting the carrier to reestablish the old system. June 1, 1923 the carrier sent a letter refusing the request of the general chairman. This seems to have ended the matter and for a period of thirteen years the work was carried on under the new arrangement without any protest by the employees. March 20, 1936 the committee brought the matter up again. Discussions took place over a period of approximately a year and the carrier again refused to reopen the question. Two years later the matter was again discussed with the same result. In June, 1941 the case was finally submitted to this Board.

Whether the clerical duties turned over to the inspectors of the association could be regarded as merely incidental to their work, in short whether the arrangement when first instituted constituted a violation of the agreement then in effect, is perhaps open to question. Persuasive with us, however, is the interpretation which the parties have placed on the agreement by their conduct. After their initial protest, for a period of almost thirteen years they acquiesced in the procedure adopted by the carrier, and thereafter up to the time of filing this complaint made but feeble protest. During all this time three new agreements were negotiated in which no settlement of this particular matter was sought. Under well recognized principles they are now estopped to claim that the agreement has been violated. Awards 1289, 1640. See also Award 1806 in Docket CL-1657.

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;

That the action of the carrier in this case does not constitute a violation of the agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.