

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

*Michael L. Fansler, Referee*

**PARTIES TO DISPUTE:**

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

**DENVER & RIO GRANDE WESTERN RAILROAD  
COMPANY**

*(Wilson McCarthy and Henry Swan, Trustees)*

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

(1) That the practice of allowing or permitting others than those covered by the Agreement in effect between the Denver & Rio Grande Western Railroad Company and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees to handle L. C. L. freight at Gunnison Freight Station, be discontinued.

(2) That Mr. H. R. Wissmath, and others coming under the scope of the Clerks' Agreement at Gunnison, Colorado, be compensated two hours under the Call Rule for each day non-employees were used to perform duties coming within the scope of the Clerks' Agreement, subsequent to December 26, 1940.

**EMPLOYEES' STATEMENT OF FACTS:** Gunnison, Colorado, is situated on narrow gauge tracks between Salida and Montrose, Colorado and was formerly served by daily rail freight service. However, several years ago daily freight service from Salida to Gunnison and intermediate points was discontinued and L. C. L. freight from Pueblo, Denver and eastern points moved by rail into Salida, Colorado, and was then transferred to Rio Grande Motor-Way trucks (a D. & R. G. W. subsidiary.)

This freight is moved on through railroad billing from point of origin. Prior to May 1941 the Rio Grande Motor-Way trucks from Salida arrived at Gunnison during the tour of duty of the freight clerk and cashier who are the only two employees at the station coming under the Clerks' Agreement, and this L. C. L. freight from Salida and points east was handled by them.

The incident which provoked the December 26th claim was rather an isolated one and the employees protested the action of the Carrier in permitting Rio Grande Motor-Way employees to open the warehouse and unload and sort L. C. L. freight. The protest was declined and the employees did not make further protest until change of schedule by the Motor Way resulted in Motor Way employees now handling daily practically all the L. C. L. freight arriving from Salida by trucks, as the trucks reach Gunnison before the regular starting time of the two employees at that point who come under the Clerks' Agreement.

Claim was prosecuted to the court of last resort on the property, failing to reach an agreement, the committee requested the Carrier to agree to

driver hands his bills to the clerk, still being required to unload and place his shipments in the warehouse in the same manner as he would were a clerk not on duty.

**OPINION OF BOARD:** In Award No. 1647 (Docket No. C. L. 1606) it is said:—

"The broad issue presented in this phase of the claim is: Where may the Railway Express Agency and other 'outsiders' pick up and deliver freight without infringing the rights of the organization under the Scope Rule? To our minds there is only one practical answer to the question, i. e., upon the platform of the warehouse. In so holding we do not in any way broaden the scope rule nor do we go beyond the necessary implication of its express terms. Of course, if there were no platform, then pick-ups and deliveries could be made by 'outsiders' on the floor, at the door, of the warehouse."

Neither party seriously questions the correctness of this rule. The difficulty is mostly in the facts.

The employees complain because the trucking company representatives carry keys to the warehouse, but we find no violation of the agreement in this.

The carrier says that the trucking company merely unloads freight on the floor of the freight house inside the door. There are references to a platform and it is not denied that there is a platform at the freight house and so under a strict interpretation of the rule above quoted unloading by an "outsider" inside the door would be a violation of the agreement.

But the employees contend that more than this is involved. The claim is that "outsiders" are permitted to "handle" freight. In their statement of facts it is said that the outsiders "sort" and "place" freight. These terms were discussed in oral argument. The carrier was of the opinion that the word "place" was used in the general sense of merely putting the freight on the floor, but the employees insist that sorting as well as placing refer to distributing the items to particular portions of the floor determined by their ultimate destination and that is what is meant by "handling." The word "sort" is consistent with this view and its meaning is not otherwise explained and we must conclude that freight is handled by "outsiders" in this sense. That this is a violation of the agreement seems clear.

**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 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 carrier violated the applicable agreement, as contended by the petitioner.

#### AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1942.