Award No. 3220

Docket No. CL-3117

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Check Clerk F. S. Turner, Stowers R. S. Ferris, Fritz Olson, Bert Mendenhall, Hyrum Pocock, M. R. Warburton and James Lloyd, be compensated two hours' pay at time and one-half of their respective rates account seven employes of the Railway Express Agency being used to transfer freight shipment of engine parts at Salt Lake City freight platform from 7:20 A. M. to 9:20 A. M., July 25, 1944, in violation of Rules 1, 3, 37, second paragraph of Rule 40 and Rule 64.

EMPLOYES' STATEMENT OF FACTS: Car No. CN-41538, engine parts weighing 33,370 pounds and covered by freight waybill from Mechanicsburg, Pa. to Mare Island, Calif., and routed D. & R. G. W.—S. P., was received at the Salt Lake freight platform on July 25, 1944 and was there diverted to Railway Express Agency and transferred to Rio Grande baggage car No. 739 and moved west on Western Pacific Train No. 39 same day.

Seven employes of the Railway Express Agency were called to the freight depot and transferred this car, which required two hours. Employes protested Express Agency employes handling this freight. Protest was denied by the carrier and the carrier refused joint submission of the dispute to Third Division, National Railroad Adjustment Board. Therefore, this case is being presented ex parte.

POSITION OF EMPLOYES: The organization contends that the commodity in question arrived in Salt Lake City as Denver & Rio Grande Western freight and was placed at the freight platform for handling. And if a diversion was made they had the right to expect to be allowed to unload this freight even though they delivered it to the Express Company on the platform of the freight house.

We deny that Railway Express Agency employes had the right to handle this freight even though it did leave Salt Lake City as an express shipment. The fact remains it arrived in Salt Lake City as a straight freight shipment. And we contend that such handling was in violation of Rules 1, 3, 37, 40 and 64.

CARRIER'S STATEMENT OF FACTS: Advice was received the afternoon of July 24, 1944, by our Superintendent of Transportation, Denver,

Of the men involved in claim, Messrs. Turner, Ferris, Olson, Mendenhall, Pocock, and Lloyd were assigned from 8:00 A. M. to 5:00 P. M. and worked their regular assignments on date of claim. Mr. Warburton, on date involved, was used as a Group One employe in a clerical capacity from 8:30 A. M. to 5:30 P. M. In other words, these employes were on duty and under pay a large portion of the time the Express Company employes were making the transfer.

Had the employes involved been used to make the transfer, they could not, under the provisions of Rule 37, legitimately have claimed two hours' pay at time and one-half rates of pay. Such work would have been continuous with their regular assignment and would have paid time and one-half rates of pay from 7:20 A. M. to starting time of regular assignment. As a matter of fact, Mr. Warburton, being a Group One employe, would have no claim whatsoever, for the reason the work of transferring carload shipments does not belong to Group One clerical employes, even if performed by employes coming within the scope of the Clerks' Agreement.

With respect to Rule 64, the Carrier asserts this rule has no bearing on or application to the claim.

CONCLUSION: For the information of the Board, on July 11, 1943, a similar case occurred at Salt Lake City, when the contents of ACL Car 55320 were diverted to the Express Company and the transfer made to Western Pacific baggage car 124 by Express Company forces. No claim was made by Rio Grande forces as result thereof.

The Carrier contends, in this case, that when CN Car 481538 arrived at Salt Lake City, the shipment contained therein was, at that time, diverted to the Express Company, and thereafter it was the Express Company's business to transfer the shipment and send it forward by express.

The Carrier also contends that there is no rule in the current Clerks' Agreement or settlement thereunder, which provides that the transfer of freight shipments diverted to the Express Company will be handled by Rio Grande employes.

The Carrier further contends that it has shown that the rules relied upon by Organization do not support the claim, and it should therefore be denied.

OPINION OF BOARD: A car of engine parts weighing 33,370 pounds and covered by a freight waybill from Mechanicsburg, Pennsylvania to Mare Island, California was received at the Salt Lake City freight platform on July 25, 1944 and, on instructions, was there diverted to the Railway Express Agency. Seven employes of the Railway Express Agency were called to transfer the shipment from the freight car to a baggage car. The Organization contends that this work belongs to freight handlers under the Clerks' Agreement and claim is made on that basis.

The work of unloading this shipment was clearly the work of freight handlers. It was just as much so as if it was being delivered to another railroad, a trucker or to the consignee. It is argued that the Railway Express Company employes were entitled to perform the work because it was an express shipment from the time the transfer was ordered. The liability of the Carrier for this shipment of freight did not cease until it was actually delivered to the Express Company. If the Express Company desired to inspect the shipment before acceptance or to see that it was properly loaded in the baggage car, such is a privilege they might exercise but it in no wise affects the fact that freight handlers were entitled under their Agreement to unload this shipment of freight and deliver it to the Express Company. Whether they delivered on the platform or at the baggage car door is not an important consideration.

The inference that Claimants are in no position to make their claim because they were working their regular assignments for a part of the period during which the work in question was performed is not tenable. The claim

is for a penalty for the contract violation. The payment of the claim absolves the Carrier from further obligation to pay. The claim of no other employe having been made, the Carrier is not required to determine the rights of employes as between themselves to the fund. An affirmative award is required.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.