

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**

NORTHERN PACIFIC RAILWAY COMPANY

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

- (1) The Carrier violated the rules of the Clerks' Agreement when on October 31, 1945 and subsequent dates it assigned one R. L. Algers, a member of the International Longshoremen's Association, to check several cars of canned goods at Ames Terminal Dock, Seattle, Washington, thus depriving employes covered by the Clerks' Agreement of the right and opportunity to perform this work.
- (2) That Carrier now reimburse Mr. T. H. Johnson, Check Clerk at Seattle Warehouse, by paying him the difference between the Waterfront Checker's rate of \$9.60 per day and his rate of \$6.82 per day, plus thirty minutes at the overtime rate of Waterfront Checker, for October 31, 1945 and all subsequent days on which this work was denied him.

EMPLOYES' STATEMENT OF FACTS: On October 31, 1945, a call was received at the Northern Pacific Warehouse, requesting that a Check Clerk be sent to Ames Terminal Dock to check carloads of canned goods for shipment. Instead of giving this assignment to Mr. T. J. Johnson, a regularly assigned Warehouse Check Clerk at Seattle, Washington, the Carrier called the International Longshoremen's Association and requested that it send a Check Clerk to Ames Terminal Dock to perform the waterfront checking in question.

CARRIER'S STATEMENT OF FACTS: Docks, piers and warehouses on the waterfront on Puget Sound at Seattle are maintained and operated by steamship, dock, wharf and warehouse companies. The freight handled on these docks, piers and warehouses is coastwise and oriental. The Northern Pacific Railway Company operates none of these docks, piers or warehouses.

Freight is handled direct from boat to pier or vice versa, also from boat to pier or warehouse to car or vice versa.

Seattle waterfront checkers are covered by an agreement between the Waterfront Employers Association and the International Longshoremen's Association and are governed by the working conditions and are paid rates specified in that agreement.

At one time the Northern Pacific operated certain piers on the Seattle waterfront as a part of its railroad operation. Northern Pacific checkers

waterfront checkers and made an award covering their rates of pay. After the meeting at Seattle in July, 1940 the Carrier heard no more from the Clerks' Organization about this matter until early in 1943. At that time the Clerks again contended that freight house checkers should perform waterfront checking. A third meeting was held at Seattle between representatives of the Carrier and of the Clerks' Organization. At that meeting the Clerks' Division Chairman stated he had discussed the matter with the local representatives of the I. L. A. but an agreement was not reached. The General and Division Chairmen advised the Carrier for the third time that the matter would be referred to their Grand Lodge.

That this matter was eventually handled by the Grand Lodges of the Organizations is shown by Carrier's Exhibit "F", which is a report on a meeting held at Seattle on March 7, 1944 and which was attended by Grand Lodge representatives of the two organizations. Carrier's Exhibit "F" plainly shows that both organizations agreed a question of jurisdiction was involved and that if not settled locally it would be referred to the Grand Lodges for arbitration. Particular attention is directed to the agreement between the Grand Lodge representatives that pending settlement of the issue there would be no change in the present method of handling waterfront checkers.

Apparently no agreement was reached between the organizations as a result of meeting of the Grand Lodge officers on March 7, 1944 as in October and November, 1945, another set of claims was presented to the Carrier based on a contention that freight house checkers should perform waterfront checking. Those claims were discussed with Vice President Lyons and General Chairman Stapleton of the Clerks' Organization in March, 1946. The Carrier was advised a Grand Lodge officer would be assigned to iron out the jurisdictional question with the I. L. A.; that no new claims would be presented; that pending claims would be withdrawn; and that after the jurisdictional question was disposed of the Clerks' Organization would be governed by the decision reached.

In May, 1947, General Chairman Stapleton verbally advised the Carrier he had been instructed to submit the claim of Mr. Johnson to this Division.

In submitting this case to this Division it is plain that the Clerks' Organization is asking you to decide a question of jurisdiction between that organization and the International Longshoremen's Association which the Clerks' Organization has been unable to have disposed of in spite of the agreement of February 19, 1938 (Carrier's Exhibit "B-1").

In 1938 the Clerks' Organization and the I. L. A. recognized that the proper procedure to be followed to dispose of this jurisdictional question was by agreement between those organizations. This is still the proper procedure. This Division has not authority to decide jurisdictional questions between organizations. Award 1184. The claim should be dismissed from the docket of this Division.

Should this Division decide to hear this case for the purpose of making an award, it is respectfully submitted that the International Longshoremen's Association should be advised of this proceeding and be given an opportunity to be heard as that Association is an interested and necessary party and unless it is heard, any award of this Division would not be enforceable.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 31, 1945, the Carrier called the International Longshoremen's Association at Seattle, Washington, and requested that it send a check clerk to the Ames Terminal Dock to perform the waterfront checking here involved. It is the contention of the Organization that this was Clerks' work and that it should have been assigned to Claimant, a regularly assigned Warehouse Check Clerk at that point.

The record shows that docks, piers and warehouses on the waterfront at Seattle are operated and maintained by steamship, dock, wharf and ware-

house companies. The Carrier operates none of these facilities although it formerly did so, during which time the waterfront checking on its own facilities was performed by its own checkers. In 1915, waterfront and freight house checkers were segregated and thereafter waterfront checkers performed no freight house checking. A closed roster was set up by the Carrier covering waterfront checkers. In 1923, the Carrier discontinued the last of its waterfront facilities. There were then ten names on the waterfront checkers' roster. On October 31, 1945, only six names remained on the special waterfront checkers' roster.

In 1930, the International Longshoremen's Association negotiated an Agreement with the Seattle Waterfront Employers' Association covering rates of pay and working conditions of waterfront checkers. The Agreement as amended from time to time remains in effect. Ten names were on the Carrier's special waterfront roster in 1930 and they continued to perform waterfront checking exclusively.

The Clerks' National Agreement effective January 1, 1920, excluded "employees on elevators, piers, wharves or other waterfront facilities covered by special wage authority of the Railroad Administration." The Clerks' Agreement on this Carrier, effective August 15, 1922, excepted "laborers on elevators, piers, wharves and other waterfront facilities not a part of the regular freight station forces."

Briefly, the foregoing was the situation when a jurisdictional dispute arose in 1937. At the Denver Convention of the American Federation of Labor, the dispute was apparently settled by a decision that all railroad employees on the waterfront were under the jurisdiction of the Clerks' Agreement. In 1942, however, a dispute arose as to the rates of pay of waterfront checkers. In the settlement of this dispute the National War Labor Board recognized the right of the International Longshoremen's Association to represent waterfront checkers in negotiating rates of pay and rules governing working conditions.

As we previously stated, only six names remained on the special waterfront roster when the present dispute arose. The Carrier says that after 1930, the date the International Longshoremen's Association secured an Agreement covering waterfront checkers, waterfront checkers required, in addition to those on the special roster, were secured from the Longshoremen's hiring hall. Claimant was qualified to do waterfront checking without question. The decision rests squarely on this proposition: Does the waterfront checking work of this Carrier in excess of that which can be performed by the six waterfront checkers on the special roster belong under the Clerks' Agreement or under the Longshoremen's Agreement?

The work in dispute was railroad work being performed under the direction of the Carrier. The Agreement of 1930 negotiated by the Longshoremen did purport to cover rates of pay and working conditions of waterfront checkers in the Puget Sound District. However, the question whether it included waterfront checkers performing the work of this Carrier was not a specific issue. The questions settled by that Agreement were those of rates of pay and working conditions only. The position of the Carrier that the work of waterfront checkers now belongs to the Longshoremen, is supported to some extent by the exception placed in the Clerks' Agreement of August 15, 1922, whereby "laborers on elevators, piers, wharves and other waterfront facilities not a part of the regular freight station forces" were excepted. The origin of this exception, however, appears to have been a similar exception contained in the Clerks' National Agreement when similar employees "on elevators, piers, wharves or other waterfront facilities covered by special wage authority of the Railroad Administration" were excluded. The exception seems to have been made to protect against conflict with powers exercised by the Railroad Administration rather than as a recognition of jurisdiction by some other Organization. In any event, the exception applied only to laborers and not to waterfront checkers. These arguments and contentions resulted in a jurisdictional dispute in 1937 which found its way into the National Convention of the American Federation of Labor to which both of the contending Organizations are affiliate and subordinate. It was there deter-

mined that the Longshoremen were without authority to represent employes in railroad work and they were directed to "immediately disassociate from its membership all members employed by railroads." This, we think, determined that railroad employes under the Clerks' Agreement were entitled to perform waterfront checkers' work if it was a part of railroad operations. It certainly cleared up all disputes of a jurisdictional nature up to that time.

In 1942, a wage dispute arose between the Waterfront Employers Association and the International Longshoremen's Association and some of its local affiliates. It is true that the latter Association was dealt with by the National War Labor Board as the representative of checkers and supercargoes in the Puget Sound area. But the Clerks' Organization was not a party to the Agreement, nor does the Agreement purport to impinge upon the decision of the American Federation of Labor on the jurisdictional matter raised in 1937. We are of the opinion, therefore, that the settlement of the 1942 wage dispute instigated by the Longshoremen in no manner changes the right of the Clerks' Organization to perform waterfront checking for the Carrier.

The Carrier cites Award 1184 in support of its position. The question in that case involved work being performed on the waterfront by contractors. The factual difference undoubtedly brought about the opposite results.

We hold that no jurisdictional dispute exists between the National Longshoremen's Association and the Clerks' Organization as to the work here in question; that the decision of the American Federation of Labor made effective by the Agreement of February 19, 1938, between these two affiliates of that Organization, settles the jurisdictional matter here raised; and that the waterfront checking of Carrier's work is within the Clerks' Agreement. This conclusion requires that an affirmative Award be entered.

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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 11th day of August, 1948.