Award No. 4100
Docket No. CL-3964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on February 26, 1947, at Benton, Arkansas, the Carrier permitted a Check Clerk, Two Truckers and Two Stowmen, outsiders, who hold no seniority rights under the provisions of the Clerks' Agreement and who are employes of the McCoy-Couch Furniture and Manufacturing Company, to handle, receive and check, load and stow in the car for its contents of Erie Car No. 95064 and Pere Marquette Car No. 92198, sixteen (16) **LESS CARLOAD SHIPMENTS** in the Erie car consigned to firms in sixteen different towns and cities, covered by waybille Nos. 2020 to 2035, both numbers inclusive, and thirty-seven (37) **LESS CARLOAD SHIPMENTS** in the Pere Marquette car consigned to firms in thirty four different towns and cities, covered by waybills Nos. 2040 to 2076, both numbers inclusive, and failed and refused and continued to refuse to assign employes who are covered by the Agreement and who do hold seniority rights on the Arkansas Division Station and Yards seniority roster to perform the work and permit them to be paid for same;

2. (a) That the Carrier shall compensate Yard Clerk A. H. White whose daily rate is $7.79 per day and whose seniority date is September 23, 1941, for ten hours at the punitive overtime rate of $1.46 per hour, amount $14.60;

(b) That is shall compensate General Clerk W. W. Rea, whose daily rate is $8.54 per day and whose seniority date on the roster is June 19, 1942, for ten hours at the punitive rate of $1.60 per hour, amount $16.00, account Carrier's action in violation of the Agreement;

(c) The occupants of the clerical positions at Benton who file similar claims in writing shall be paid for each date that the Carrier violates the Agreement in this manner subsequent to February 26, 1947 until the Carrier does comply with the Clerks' Agreemcnt and the complaint is disposed of and the claims satisfied.

EMPLOYES' STATEMENT OF FACTS: The station force at Benton, Arkansas, at the time the involved claims arose, subject to the scope and opera-

Exhibits not reproduced.

OPINION OF BOARD: The facts are fully set forth in the respective submissions of the parties and will not be related in detail.

As sustaining its claim the Brotherhood relies on the following Rules of the Current Working Agreement: 1 (Scope); 2 (Definition of Clerk); 4 (Promotions, in the exercise of seniority rights), 5 and 6a (Seniority districts and rights); 25 (Overtime and Calls), and 43 (Effective Dates and Changes). Such Rules will not be quoted. It suffices to say that after carefully laboring an extended and complicated ex parte submission consisting of 62 pages, we are satisfied not only from our own examination but from its own argument, the scope (Rule 1) heretofore mentioned is the only Rule having possible application or entitled to serious consideration *in determining whether the Brotherhood's position is to be upheld.*

The practice of which the Brotherhood complains as being in violation of the scope rule and on which it relies as requiring the sustaining of its claim can be outlined in summarized form as follows:

1. The McCoy Couch Furniture and Manufacturing Company has a plant located at Benton, Arkansas. It sells and makes wholesale shipments of furniture. Some shipments are carload and others less than carload. The tracks on which cars are loaded are its property.

2. On all dates in question Carrier had in force and effect a tariff, duly authorized by Federal and State authorities, permitting trap car service on less than carload shipments of freight aggregating 6,000 pounds or more.

3. During such time the McCoy Company had three alternatives in shipping goods it manufactured. It could call for a contract drayman, it could deliver freight to the Carrier's warehouse in less than carload lots or it could take advantage of the trap car service authorized by the tariff.

4. On November 12, 1943, the Furniture Company made a request upon the Missouri Pacific agent at Benton, Arkansas, for trap car service from its plant at Benton, Arkansas, when it had a quantity of less than carload shipments. In accordance with that request, and in accordance with the provisions of the tariff referred to in Paragraph 2, the agent of the Missouri Pacific arranged for empty cars to be placed on the McCoy Company's track opposite its warehouse door and platform for loading. As cars were spotted the Company loaded shipments of furniture into the cars, to full capacity in accordance with the Tariff referred to above. The merchandise so loaded was for various consignees at various destinations. Bills of lading were issued by it and presented to the Missouri Pacific agent at Benton, Arkansas, who signed the bills of lading for the Carrier, accepting the merchandise as shippers load and count. After the freight was waybilled, from copies of the bills of lading or shipping orders, the Carrier's agent then reviewed the waybills, noting the destinations and routing of the shipments, and determining whether or not the car should be worked at the Benton freight house or whether it should be forwarded to another freight house located on the Missouri Pacific Lines where it would break bulk and freight distributed to various way cars originating at the break bulk point. Waybills were pouched and the break bulk point written on the pouch, or waybills were mailed to the break bulk point and the car was forwarded on slip bill or merchandise bill to the bulk point. When the McCoy Company did not have the required amount of merchandise to ship less than car load to meet the minimum set up in the Tariff, such shipments as it did have were handled to the platform of the Missouri Pacific freight house located in Benton, Arkansas, where the actual handling of such merchandise through the house and into less than carload merchandise cars was performed by freight house forces.

5. During the time freight was being so loaded by the McCoy Company and until bills of lading therefore were signed and accepted by the Carrier's agent all freight involved under these Claims was in the Shipper's custody and any loss accruing thereto, except negligent acts for which the Carrier

was directly responsible, was its responsibility and liability and of no concern to the Carrier.

6. The Claim seeks compensation for two warehouse Clerks at the punitive rate for time spent by the McCoy Company's help in loading the involved freight cars on the theory the work belonged to them under the Agreement.

So far as the Claim relates to the Erie and Pere Marquette freight cars therein specifically described the Carrier asserts, and the Brotherhood does not deny, such cars moved directly from Benton to Little Rock, Arkansas, on the Carrier's railroad where the cars broke bulk and where Clerical Employes covered by the instant Agreement handled all merchandise therein contained in the same manner it would have been handled had such cars been worked at Benton instead.

The gist of the Brotherhood's claim is that the practice heretofore outlined actually results in farming out work belonging to the Clerks under the scope rule whereas such rule contemplates that cars handled in such manner should be switched to the Carrier's freight or warehouse and shipments checked, loaded and stowed in LCL Merchandise Cars for line of road haul just as they were before trap car service was put into effect or as they would have been handled had the shipper elected to deliver its freight direct to the warehouse.

The Brotherhood, conceding there is no express rule to be found in the contract prohibiting the practice of which it complains, relies upon Awards of this Division announcing and following general principles to the effect that a Carrier may not contract with others for the performance of work embraced within the scope rule of a collective Agreement made with its employes (e.g., Awards 3251, 1453 and 360) and work belonging to an Agreement cannot be given to those not covered by its terms (See Awards 2506 and 3375). Special reliance is placed upon Awards 1647, 1648, 1649 and 1650, sustaining Claims where the Carrier had permitted outsiders to check, handle and truck freight in and out of the warehouse, thereby depriving Clerks of that work, and wherein this Division held in substance that such work was clearly within the scope of Rule 1 and that the Carrier had no right to remove it from the Agreement either by farming it out or by permitting others not within the protection of its terms to perform it.

We have no quarrel with the general principles announced in the foregoing Awards. The difficulty from the Brotherhod's standpoint is that they only have application to situations where work within the comprehension of the scope rule of an Agreement is taken from employes covered by its terms and turned over to those who are strangers thereto. Then and then only are they applicable.

No useful purpose would be served by here giving extended consideration to the arguments advanced by the Brotherhood in support of its position. It is enough to say that after giving all of them consideration we have reached the conclusion its position is not tenable. This case in our opinion does not disclose a situation where work comprehended by the scope rule has been farmed out by the Carrier or given by it to other persons. On the contrary, under the conditions and circumstances disclosed by the record, it is our view the work of which complaint is made was the shipper's work and hence could not come within the purview of the working Agreement between the parties. Liberal as our Awards have been in construing the force and effect of scope rules we refuse to believe or hold, in the absence of any express provision in the contract requiring it, that a scope rule of the character here involved in and of itself standing alone is to be construed as prohibiting contracts for trap car service between Carrier and shipper pursuant to an authorized tariff, under conditions where the latter is authorized and permitted to load freight cars on its own tracks, at its own dock and with its own help. It necessarily follows that when such contracts are entered into and the work of loading trap cars is performed by employes of the shipper the Carrier cannot be subjected to lia-

bility by its own employes upon the theory they have been deprived of work to which they were entitled under the existing Clerks Agreement.

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 record fails to disclose a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of September, 1948.