

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR CO.; THE ORANGE &
NORTHWESTERN RR CO.; IBERIA, ST. MARY & EASTERN
RR CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA
& NORTHERN RR CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RAILWAY CO.; HOUSTON
NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO
GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGAR-
LAND RY. CO.**

(Guy A. Thompson, Trustee)

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

(a) The Carrier is violating the Clerks' Agreement at Laredo, Texas, by requiring or permitting a trucker to perform the work of a Delivery Clerk. Also

(b) Claim that the work in question be assigned to and performed by an employe classified and paid as a Delivery Clerk. Also

(c) Claim that the trucker and all employes involved in or affected by the Agreement violation be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: At Laredo, Texas the Carrier has what is designated as "the lower house" which is a warehouse separate and apart from the main or upper freight warehouse.

The only employe on duty at the lower house is a freight handler or trucker.

Freight in the lower house is consigned to many different consignees and Custom Brokers and consists of many different kinds of LCL freight.

A little more than one year later the General Chairman in a letter to the Carrier, dated December 18, 1946, adopted the theory on which the claim is now based and increased the demand to four hours per day at the overtime rate.

It would seem most inequitable to permit a recovery on a claim for the period back to September 12, 1944, when no proper claim was made therefor, either in theory or amount, prior to December 18, 1946.

We also have here, as we had in Award No. 2126, a case where the enforcement of a claim was permitted to drag over a long period after the Carrier's position with respect to it had been made perfectly clear to the Employees, here a period of more than a year of utter silence after the final decision of the Carrier on the first claim presented. That furnishes additional reason for not permitting recovery for the period from September 12, 1944, to December 18, 1946."

It is the position of the Carrier for reasons shown throughout this submission, that there is no basis in fact for the contention and claim of the Employees in the case under consideration. Therefore, the contention of the Employees should be dismissed and the accompanying claim accordingly declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees claim that a Trucker employed in Carrier's lower warehouse at Laredo, Texas, is performing the work of a Deliveryman. They assert a violation of Rule 2 (Classification Rule) of the Agreement, asserting that Truckers are Group 3 employees, being described in the Agreement as "Laborers employed in and around stations, stores and warehouses," whereas Deliverymen are classified as Clerks in Group 1. Carrier denies that the employee involved in the claim performs any work other than that of a Trucker.

The issue involved herein is purely one of fact. Realizing that we have examined the record with meticulous care in an attempt to get at the truth of the matter, after weighing the numerous assertions and denials of each side and giving due consideration to the weight of each, we have tried to reduce the somewhat lengthy record to a statement of facts which would enable us to get a true picture of what is complained of. In view of the nature of the record, that was not an easy task.

It appears that for some years at Laredo, Texas, the Carrier maintained a freight station. In 1942 it became necessary for Carrier to provide additional warehousing facilities. Accordingly, a section of a transfer shed south of the main freight warehouse was enclosed and used as a warehouse. Since the shed has been utilized as a warehouse it has become known as the lower warehouse and the main, or regular warehouse, is known as the upper warehouse. There are Check Clerks, a Delivery Clerk, Warehouse Foreman and other clerical people employed at the upper warehouse and a Trucker more or less exclusively assigned to the lower warehouse.

It appears that there has been much controversy concerning claims by the Employees that Truckers were performing Deliverymen's work at the warehouse going back to early 1943. As Carrier states the facts, the Delivery Clerk's position was not in existence prior to March 1943, when the position was established as a result of the earlier controversy. Carrier asserts that the establishment of the position apparently corrected the situation the Clerks' Organization complained of since nothing further was heard from the Organization until receipt of a letter from the Division Chairman dated February 1, 1946, complaining that the Trucker in the lower warehouse had been doing Delivery Clerk's work ever since he had been there, to wit: since May 11, 1942. The Employees assert that the earlier controversy which re-

sulted in the establishment of the Delivery Clerk's position did not involve the Trucker in the lower warehouse. This assertion of the Employees, however, is not entirely borne out by the record, for a letter of the General Chairman to Carrier, dated June 5, 1946, with respect to the instant case refers back to his letter of January 28, 1943 and refers to the matter having been called to the attention of Carrier on many occasions. We believe that this indicates to some extent that, if not part and parcel of the 1943 dispute, the present claim is related thereto. Hence there is some justification for Carrier's assertion that it considered the matter settled by the establishment of the Delivery Clerk's position in 1943, not sufficient, however, to defeat this claim if other facts of record bear out the contention that the Trucker is performing Deliveryman's work.

Carrier asserts, and the Employees do not effectively refute, the truth of the assertion that this is what happens when freight is delivered to a consignee at Laredo from the lower warehouse. The party calling for freight first pays the freight bill at the Cashier's Office, then takes the freight bill to the Delivery Clerk, located in the upper warehouse, who checks the payment of charges and date paid to see whether or not any storage charges have accrued and been collected, and with respect to any over, short or damaged freight; and if the shipment is in the lower warehouse the party calling for the freight, after going through the above procedure, goes to the lower house to pick it up. The Trucker then locates the freight being called for and trucks it out to the patron's truck.

Now, when the freight is unloaded from cars into the warehouse a check is made by a Check Clerk and a record made of any over, short or damaged freight which record is available to the Delivery Clerk at the time the party calling for the freight contacts him. In effect then, the only function the Trucker performs which is in addition to the physical handling of the freight is locating the freight and seeing to it that he gives the customer only his freight and all of it. Employees submit, however, that "the Trucker must make an actual check of the freight in order to know that he has delivered the correct shipment, out of many shipments for the same consignee, in order that he may deliver the correct number of pieces and in order that he may develop any damage, all of which are Delivery Clerk's duties." As to the development of damage, we believe that the record established that that phase of the work has been done before the party calling for the freight contacts the Trucker in the lower warehouse so that all that remains for the Trucker to do besides actually physically handling the freight is to go to the piles and pull out that which is called for by the paper handed to him by the party calling for the freight. This limited exercise of intelligence and use of the senses is hardly enough in addition to the physical handling involved, in our opinion, to constitute the function performed by the Trucker Delivery Clerk's work. (See Award 2226 for a somewhat analogous situation involving store laborers.) It may be that it is a risky practice for the Carrier to permit the Trucker, essentially a common laborer, to exercise such little judgment. Perhaps a more meticulous carrier would want a Delivery Clerk to stand over the Trucker, pointing out to him what to truck and checking out what is unloaded into the consignee's truck, but even if the procedure followed by Carrier were a poor business practice, that would not be enough to establish a violation of the Agreement.

We have gone into this rather extensive analysis of the factual situation in this case for it is on the entire record and inferences to be drawn therefrom that we have reached the conclusion that the Carrier has not violated the 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 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 Carrier did not violate 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 22nd day of March, 1949.