Award No. 4465
Docket No. CL-4368

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that:

(a) The Carrier violated the Clerks' Agreement at LaGrande, Oregon, August 28th, 1946 by requiring and permitting seven (7) section laborers, employes who were not covered by the Clerks' Agreement, to transfer a carload of grain doors from CBQ Car No. 34119 to NYC Car No. 177706, the transfer being made at the La Grande Freight House platform between the hours of 7:00 A. M. and 3:00 P. M.; also

(b) Claim that truckers Earl Johnson, Joe Kalin, Howard Blakeney, and J. M. Matheson, all regular assigned truckers at the La Grande freight house platform be paid six hours and fifteen minutes (6 hrs. 15 min.) each at the rate of time and one-half, they having completed their regular assignment as truckers at 8:45 A. M. and were available to transfer the grain doors.

EMPLOYES' STATEMENT OF FACTS: On August 28th, 1946, seven (7) section laborers, employes not covered by the Clerks' Agreement were used from 7:00 A. M. to 3:00 P. M. at the LaGrande, Oregon, Freight House platform to transfer a carload of grain doors. Earl Johnson, Joe Kalin, Howard Blakeney, and J. M. Matheson were regular assigned truckers with assigned tour of duty ending at 8:00 A. M. but on the morning of August 28, 1946, were worked until 8:45 A. M. and they were then available to transfer the grain doors.

The loading, unloading and transferring of all freight, either Company or Revenue, at the freight house platform is work, that has for many years been performed by Freight House platform employes and work that has for many years been recognized by the Carrier as work coming under the Scope Rule of the Clerks' Agreement.

Under date of November 23rd, 1946, Division Chairman Eoff wrote Division Superintendent McCarthy as follows:

"Mr. P. T. McCarthy, Supt.,
Union Pacific Railroad Co.,
2525 N. Larrabee Ave.,
Portland 12, Ore.

Dear Sir:

On August 28th, 1946, the Section forces at LaGrande worked from 7:00 A. M. until 3:00 P. M., transferring a carload of doors

exclusively to the clerical employes covered by the Clerks' Agreement and that agreement was not violated.

The Carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 28, 1946, a load of doors arrived at LaGrande, Oregon, in a "bad order" car. Carrier assigned section forces working from 7:00 A. M. to 3:00 P. M. to transfer the lading to a good order car. To effect the transfer, the "bad order" car was placed at the team track at the end of a long, narrow, car-door-high platform extending out from the wider platform around the freight house and the good order car placed across said platform on the freight house tracks. Employes contend that the use of the section men to perform this work is a violation of the Scope Rule of the Agreement and file claim on behalf of the four Claimants who are station employes.

Employes assert that the loading, unloading and transferring of all freight, either Company or Revenue, at the freight house platform is work that has for many years been performed by freight house employes and is work that has for many years been recognized by the Carrier as work coming under the Scope Rule of the Agreement. Carrier, on the other hand, asserts that the work of transferring lading from bad order cars to good order cars is not work of a nature which is performed exclusively by employes of the class represented by the Employes' Organization and that such work has been performed on Carrier's Railroad by whatever class of employes is available without regard to the location or point of transfer. We think the issue in this case is simplified by the following statement of the Employes:

> "The Carrier contends that the work of transferring loads from 'bad order' cars has in the past been performed by whatever class of employes that was available, and states further, in part: 'Although there no doubt have been instances where employes included within the scope of the Agreement have performed this work,' but, the employes contend that in all instances the work which was performed at Freight House Platforms has at all times been performed by station employes, covered by the Clerks' Agreement, however, the employes have no desire to be unreasonable by contending that the transferring of all loads from 'bad order' cars must be performed by station employes, and the Carrier, without question of doubt when they contend that transferring loads from 'bad order' cars has been performed by whatever class of employes ready available had reference to transferring of cars set out for transfer at wayside stations, sidings, or emergency repair tracks where station employe forces were not maintained, and we would not be unreasonable enough to contend that station employes, covered by the Clerks' Agreement, should be transported to these way points to perform the work, but we do contend that such work at the Freight House Platforms should be as has been in the past for many years, performed by station forces."

Thus, the issue is clearly presented as to whether or not the work of transferring lading from bad order to good order cars, which work if performed at other locations is admittedly not within the scope of the Clerks' Agreement, becomes covered by reason of it having been performed at the end of the platform above described.

In the Scope Rule of the instant collective bargaining Agreement, as in most Clerical Agreements, work is not specifically defined as such. However, it is axiomatic that such rules reserve work to the craft and, generally speaking, that such work as is reserved is that which is usually and traditionally performed by the class of employes listed therein and all work in addititon thereto as may be shown to have become included by subsequent negotiations. Here there is conflict with respect to whether or not this work

when performed at the freight house platform has been historically or traditionally performed by the station employes. Strangely, although employes assert that the loading, unloading and transferring of any and all freight at freight platforms where regular station forces are maintained has at all times been recognized as work belonging to employes under the Scope Rule, they have not shown any instance where the work of transferring bad order freight to good order has been done solely by clerical employes. Employes alleged one instance of an assignment of such work to the clerical employes subsequent to the date of the claim but it was effectively rebutted by the Carrier showing that section men worked along with truckers and that section men did about two-thirds of the work involved and, further, that the work was not performed at the platform but in the yards. Admittedly, however, the type of work, to wit: transfer of bad order lading to good order cars, is not historically or traditionally exclusively performed by station employes. It is quite clear that if the work were performed a short distance from the station platform by use of skids or planks there would be no question but that it would be outside the scope of the Agreement. Now then, it has been effectively shown by the Carrier and not disputed by the Employes that the end of the freight platform used in making this transfer is used by shippers and receivers of freight in the handling of shipments to and from cars by them or their employes, apparently without protest from the Employes. This factor indicates to an extent that locale of performance of work in itself is not determinative of the right of classes of employes to its performance. It seems to us a reasonable conclusion therefore that the substitution of the freight house platform as a mechanical means to facilitate the transfer instead of some other contrivance would not justify a holding that the questioned work thereby becomes covered by the Scope Rule of the Agreement.

Employes have placed great reliance on Award 3826 as supporting their position. Carrier, on the other hand, relies very heavily on Awards 3003 and 3004. It is clear that the facts in this case are distinct from those presented in Award 3826 but they are somewhat akin to those presented in Awards 3003 and 3004, which latter awards also involved the transfer of bad order lading to good order. We think that the holding in those Awards lend support to our view that a denial Award in this case is in order.

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 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 19th day of July, 1949.