

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

**PARTIES TO DISPUTE:**

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

**BOSTON AND MAINE RAILROAD**

**STATEMENT OF CLAIM:** Claim of the System of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

1. That the Carrier violated the provisions of the Clerks' Agreement effective May 14, 1948 in permitting and allowing shippers, consignees and contract truckers of LCL freight at its Freight House, White River Junction, Vermont, to make delivery of such freight onto the freight house platform and to pick up freight from the freight house floor, using the two-wheel trucks of the railroad freight handlers, prior to the regular assigned starting time of the Carrier's freight house forces, at 8:00 A.M., thus performing the work that is ordinarily and customarily recognized as the duties and work of the Carrier's freight house forces.

2. That the Carrier, therefore, be required to reimburse Angus N. Allan and George A. Chapman for one hour per day at one and one-half times the straight time rate of their positions, effective as of October 27, 1948, and continuing so long as the alleged violation continued.

**JOINT STATEMENT OF FACTS:** At the time of the origin of this claim, October 27, 1948, the freight handling forces at White River Junction were on a regular assigned tour of duty, commencing at 8:00 A.M., each week day, Monday to Saturday, inclusive, at which hour the freight house is open for business.

On or about that date it developed that the Carrier was permitting truck drivers of various shippers and consignees of LCL freight to come to the freight house between the hours of 7:00 A.M. and 8:00 A.M. and make delivery of their freight for shipment onto the freight house platform and to pick up freight consigned to them which had been placed at different points on the freight house floor, using the Railroad freight handlers' two-wheel trucks to truck this freight to their vehicles, this work being done by them prior to the time that the freight house forces were called upon to report for duty at 8:00 A.M.

On October 27, 1948, senior freight handlers Angus N. Allan and George A. Chapman filed claim for reimbursement for the time between 7:00 and 8:00 A.M. at one and one-half times the straight time rate of their position and continuing each day so long as the alleged violation continued.

### III. THE CLAIMANTS ARE BARRED BY LACHES

It is clear that the present practice about which the Claimants now complain has been in existence for many years. The Claimants having acquiesced in this practice for so long and the Carrier having relied on such acquiescence, the Brotherhood is now estopped from claiming it is a violation of their contract. (See *D. L. & W. vs. O. R. T. et al* cited above.)

While the Statement of Facts reads—"On or about that date (October 27, 1948) it developed that the Carrier was permitting etc." no inference is to be drawn that the practice complained of only began on that date. The practice has existed at White River Junction for more than twenty-five years.

See Exhibit A—Undated letter from several employees.

See Exhibit B—Letter from L. B. Corkum, October 12, 1948.

It is clear that the claim is merely a belated attempt to procure by Award a rule that the Brotherhood has twice withdrawn from negotiation and that the date, October 27, 1948, is of importance only as the date the first claim was filed. After all these years, and after twice asking unsuccessfully for a rule, it seems too late for the Claimants to appeal successfully to this Board. Certainly, when the request for a rule covering tailgate delivery was voluntarily withdrawn during the negotiations the Carrier had a right to believe that the question of tailgate delivery was a dead issue.

For the reasons stated the claim should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts are not in dispute that shippers, consignees and contract truckers of LCL freight made delivery onto the freight house platform and picked up freight from the freight house floor at the Freight House, White River Junction, Vermont, prior to the regular assigned starting time of the Carrier's freight house forces at 8:00 A.M.

The claim of the Employees is that these shippers, consignees and contract truckers of LCL freight from October 27, 1948 to November 13, 1948 (the date the Carrier ordered the discontinuance of this practice of handling freight) appeared at the freight office from 7:00 A.M. to 8:00 A.M. and handled freight from the warehouse to their trucks and delivered freight onto the platform in violation of the Clerks' effective Agreement, and that the Carrier violated Rules 1 (a), paragraph 4, 2 (c), 3 (b) and 17 (a).

An examination of the record reveals that from 8:00 A.M. the checking of freight in and from the warehouse was performed by Clerks.

The work performed by truckers is work under the Agreement and when the Carrier permitted outsiders to perform said work before the tour of duty of said agreement employees, and before the warehouse was open for business, they violated the current Agreement. The violations are discussed at great length in Awards 1647 and 2686, and this referee concurs in the discussion and findings of these Awards.

The Claimants will be paid by the Carrier one hour per day from October 27, 1948 to November 13, 1948 at the pro rata rate. Award 4196.

**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

The Carrier violated the Agreement.

#### AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.