Award No. 6670
Docket No. CL-6759

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

1. The Carrier violated the terms of the current effective Agreement between the Parties, when on December 28, 1951, January 17, 1952, February 27, 1952, March 22, 1952, and April 9, 1952 it hired an outsider, who held no seniority or other rights under the Clerks' Agreement nor, in fact, any other employe status with the Carrier, to unload and stockpile grain doors adjacent to the team track or to load grain doors from the stock pile into cars set on the team track at Chaffee, Mo., at a rate of pay of $1.00 per hour, when regular employes entitled to the work were available and willing to work.

2. Stowman A. C. Grojean, senior available Group 3 employe, now be compensated for 8 hours overtime at penalty rate on December 28, 1951 and for a minimum call each date January 17, 1952, February 27, 1952, March 22, 1952 and April 9, 1952 account failure of the Carrier to permit him to perform work to which he was entitled.

EMPLOYES' STATEMENT OF FACTS: 1. Included in the station force under supervision of the Agent at Chaffee, Missouri, are two positions of stowmen, rate $1.552 per hour prior to January 1, 1952, rate $1.592 per hour January 1, 1952 to March 31, 1952 and, rate $1.582 per hour effective April 1, 1952 with regular assignments 12:01 A. M. to 8:01 A. M. Monday through Friday, with Saturday and Sunday being designated rest days. Mr. Grojean, with Group 3 seniority from 4-27-43, was the senior regularly assigned Group 3 employe.

2. On Friday December 28, 1951, immediately after the Group 3 force had completed the regular assignment, the Agent hired a man off the street, who otherwise had no employe status with the Carrier and who was not continued in the service of the Carrier, to unload grain doors from Car AA 90151 and stockpiling them adjacent to the team track, using him from about 8:01 A. M. to about 5:01 P. M. with an hour out for lunch and paying him at the rate of $1.00 per hour on the Agent's station expense roll.

3. On Thursday January 17, 1952, at about 3:00 P. M., after the regular Group 3 force had completed the regular assignment for the day, the Agent again hired a man off the street, who otherwise had no employe status with the Carrier and who was not continued in the service of the Carrier, to load

The fact of the matter is that as late as October 25, 1950, which antedates the instant claim by a little more than a year, the Brotherhood of Maintenance of Way Employes made claim that the work of unloading station coal and grain doors is work that belongs to employes in the track department covered by agreement with the Brotherhood of Maintenance of Way Employes. The claim of the Brotherhood of Maintenance of Way Employes to exclusive rights to performance of this work was declined on substantially the same basis that the claim of the Brotherhood of Railway Clerks was declined on the property.

Aside from the use of grain door agencies or other classes or crafts of employes to handle grain doors, the Carrier has in some cases, as in the instant dispute, used casual labor for this purpose.

A somewhat similar claim has been before this Division where the Brotherhood of Railway Clerks on another property claimed a violation of the working agreement on account of section laborers having been used to transfer a load of grain doors from a bad order car to a serviceable car and in Award 4465 of this Division the Clerks' claim was denied.

It is the Carrier's further position that the minutes of the negotiating conference in May, 1921 do not support the instant claim. Although there has been only a slight change, not here material, in the particular rule involved in this dispute since it was first adopted July 1, 1922, the Carrier submits that it is entirely clear as written and that it is unnecessary for this Division to resort to the minutes of the May, 1921 negotiating conference to determine its meaning. This Division held in Award 5790 that—

> "If a rule is clear, then the history of the negotiations leading up to its adoption should not be considered in determining its meaning for we are then limited to a consideration of the intention made manifest thereby as we do not have authority to rewrite or amend the rules or provisions of the agreement itself. See Awards 2467, 4181, 4505, 5133 and 5430 of this Division. Of course, if the rule or provision agreed to can be said to be ambiguous, the opposite would be true."

In summarizing, the work in question is not covered by the scope rule of the Clerks' Agreement, nor is it a type of work which has been traditionally and customarily performed exclusively by clerical employes, but to the contrary the Carrier has submitted what it considers is sufficient evidence to definitely and conclusively establish that it is work which, although it may be performed in some instances by clerical employes, also has been and is performed by grain door agencies, independent contractors, other classes or crafts of employes, and casual labor, and in these circumstances, the claim being without merit, the Board is respectfully requested to so find.

All data used in support of the Carrier's position have been made available to the employes and are made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On the dates of claim Carrier used off-street labor for the purpose of handling grain doors for unloading and stockpiling or loading from stockpile to cars set out on a team track at Chaffee, Missouri. Claim was filed as indicated on behalf of a Stowman, a Group 3 employe stationed at Chaffee, Missouri.

The effective Scope Rule of the Agreement reads as follows:

> "Rule 1. These rules shall govern the hours of service and working conditions of the following employes of St. Louis-San Fran-

cisco Railway Company and St. Louis, San Francisco and Texas Railway Company, subject to exceptions noted in this rule.

"(1) * * *

"(2) * * *

"(3) Station, platform, warehouse, transfer, dock, storeroom, stockroom, and team track freight or material handlers or truckers and other similarly employed; sealers, scalers, fruit and perishable inspectors, stowers, stevedores, callers, loaders, locators, coopers, and others similarly employed; and laborers employed in and around stations, offices, storehouses and warehouses, and stock yard laborers."

We have frequently held in our awards under like Scope Rules that the work reserved to employes covered thereby is that which has been traditionally performed by the classifications of employes listed therein. Employes claim that it has been the practice for employes covered by the Clerks' Agreement to handle this type of work. Carrier asserts that the work of unloading grain doors has been traditionally handled indiscriminately by employes covered under the Clerks' Agreement, section forces and outside labor.

The evidence of record indicates that there were scattered instances where some casual labor was used in connection with loading and unloading of grain doors where the same has been for Carrier's account as in the present instance. However, the great bulk of that work has been performed either by employes covered by the Clerks' Agreement or by employes covered by the Maintenance of Way Agreement. While it is impossible to designate with mathematical precision the work of loading and unloading which has been done by the employes under the Clerks' Agreement and other Carrier employes, it does seem that the historical background is best summed up in the words of the Carrier's Assistant to the Vice President in the conferences leading up to the Agreement of July 1, 1921 when paragraph 3 of Rule 1 was first negotiated:

"Mr. Jones (Asst. to Vice-Pres.): I wanted to be certain about that. We have had controversies before when we spoke of material handlers. There are a good many points on this railroad where the Mechanical Department, as you know, has entire supervision of and handling of transferring of cars, or the shifting of loads in connection with their own work in repairs of equipment, and it is not my understanding from this that you folks intended to cover that. In other words, I have in mind that what you intended to cover is any and all work of that nature of transferring freight, handling freight, that is freight handlers, or material handlers that comes under the supervision of the freight agents, so to speak, or the storekeeper, if it is a storehouse proposition."

* * *

"Mr. Jones (Asst. to Vice-Pres.): Your present National Agreement as it was drafted provided laborers employed in and around stations, freight houses and warehouses, wherever any of this work we are speaking of has been under the jurisdiction of the agent men carried on his payrolls, we have always conceded to you that it came within that paragraph 3, Article 1, but we have felt that wherever the work is handled by the Mechanical Department under their supervision and operation, and carried on their pay rolls, that the men performing that work then should come under the rules that govern other labor, so to speak, under the Mechanical Department."

The Carrier has objected to our considering this as having any bearing on this controversy contending, in effect, that all prior negotiations are

merged into the Agreement and that the Agreement should be construed only from its own language. That objection, however, is untenable in this situation for here we are faced with the problem of determining the intent of the parties as to work covered by the Agreement. That work is not spelled out in the Agreement but by necessary implication according to awards of this and other Railway Labor tribunals, the Agreement does cover work and what that work is must be determined by evidence outside the written words of the Agreement.

It is contended on behalf of this Carrier that in order to prevail in this instance that the employes must show that all loading and unloading of grain doors has been exclusively handled by the employes in Group 3 of the Clerks' Agreement. We cannot agree with that contention. The commodity handled, so long as it is company freight or handled for the Carrier's account, is of no material significance. It is the work of loading and unloading which is involved and of importance. Clearly not all loading and unloading of commodities or of any given commodity is covered by the Scope Rule of the Clerks' Agreement just as all clerical work is not so covered. Here it is established that the commodity handled was what is commonly called "company material" that the cost of the labor involved was chargeable to the Carrier, the work was performed under the jurisdiction of the Agent and carried on the Agency account and within reasonable proximity to the station. It appears to us that the work fits into the category conceded in the words of Carrier's Assistant Vice President to the Organization under paragraph 3, Article 1 of the Agreement. It follows that a sustaining award is indicated.

The claim for eight (8) hours at penalty rate on December 28, 1951 is improper. Under numerous awards of this Board the proper penalty is its pro rata rate. With that qualification we find that its claim should be sustained.

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 Carrier violated the Agreement as indicated in the Opinion.

AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1954.