

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

1. That the Carrier restore to Stores Department employees, the work of preparing journal box packing in rolls, and the issuing of such journal box packing (To Mechanical Department Employees) as was the practice at Spencer, N. C., and Hayne, S. C., for a period of years prior to 1940 when the work of preparing the journal box packing in rolls was discontinued. Beginning in 1950, the practice of preparing the journal box packing in rolls was restored, but instead of restoring the work to proper Storehouse Men (Dope House or Oil House Men), the work was assigned to and, since that date, has been assigned to and has been required of Carmen (Carmen Helpers) Mechanical Department employees covered by an entirely different agreement.

2. That proper Stores Department employees (Storehouse Men) be compensated for any and all monetary loss suffered as of May 22, 1950, at Hayne, S. C., and as of October 8, 1950, at Spencer, N. C., and subsequent thereto until the work is restored under the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: For a number of years, the work of preparing journal box packing in rolls was performed by Storehouse Men (Dope House or Oil House Men), at Spencer, N. C., Shop and at Hayne, S. C., Car Shops and Rip Track Freight Yard. The journal box packing after being made into rolls by Stores Department employees was packed or stacked into metal barrels or square metal boxes which served as a vat and oil was poured over the rolls to resoak them at various intervals, the journal box packing so prepared was issued to Carmen (Mechanical Department employees), as needed by them in packing journal boxes on both Freight and Passenger equipment.

Beginning about 1940, the practice of preparing journal box packing in rolls was discontinued and loose packing was issued to repack journal boxes, until the latter part of 1949 or the early part of 1950 when the practice of preparing journal box packing in rolls was restored.

Division Award 1523 involving claim that machinists' and electricians' work was being performed by Signalmen in maintaining and repairing car retarders. See also First Division Award 15220. There are others.

This case meets the conditions dealt with in those awards. The work here claimed by the Brotherhood on behalf of storehouse men is **not** included in Rule 2 (f) of the effective clerical agreement which defines the work of storehouse men, and the work claimed is now being performed and has for many years been performed by employees of the Carmen's craft whose claims are subject to the jurisdiction of the Second Division of the Adjustment Board. Based on the findings of awards involving notice, necessary parties, and jurisdiction of the respective divisions in such cases, the claim of the Brotherhood in this case should either be dismissed because the Third Division does not possess authority to make a valid award against employees of a craft over which it has no jurisdiction, or it should be denied because the work here claimed has not been contracted to storehouse men under the effective clerical agreement. Carrier respectfully requests that the Board dismiss claim for want of jurisdiction, but if not dismissed, that it be denied.

All relevant facts involved in this dispute have been made known to the employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears from the record in this case that the Carrier Members of the Board objected to the Board's assuming jurisdiction in this docket because "there is another or other parties whose interest might be affected by an award."

That this is true also appears from the claim which says that the work for which claim is made "has been assigned to and has been required of Carmen (Carmen Helpers), Mechanical Department employees covered by an entirely different agreement" and claim is further made for all monetary loss suffered "until the work is restored under the Clerks' Agreement".

It thus appears that the men in the Mechanical Department are men "who were directly involved in the claim", (using the same quotation as was used by the U. S. Circuit Court of Appeals for this District (Northern District, Eastern Division) in Case No. 10959), October Term, 1953, January Session, 1954, as appears in its opinion announced March 9, 1954). Notice must be given them.

We know that disputes involving employees of the Mechanical division are under the jurisdiction of the Second Division of this Board and in that connection we have given careful attention to the opinion of the Board in Award No. 5702. In that award Referee Wenke relies on certain language of the Supreme Court of the United States in *Slocum vs. Delaware, Lackawanna & Western Railroad Co.*, 339 U. S. 239, but a reference to that opinion shows that in footnote 7 the Court said, "Nor are we called upon to decide any question concerning judicial proceedings to review board action or inaction", which statement is supported by the Court's statement in the *Illinois Central Case*, supra, which is quoted from in our recent Award 6680, wherein we held that in light of that Opinion, this Board is powerless to proceed until the notice to other parties "who were directly involved in the claim" is given.

Consequently the same disposition must be made of this docket as was done in Award No. 6680.

FINDINGS: The Third Division of the Adjustment Board 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 the claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1954.