Award No. 8417
Docket No. CL-8204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated the controlling agreement, effective September 1, 1949, by taking such unilateral action in February, 1954, and on a subsequent date thereto in removing work normally and traditionally assigned to and performed by City Auditors at Kansas City, Missouri, when the Bureau required and/or permitted the City Auditors to furnish Bureau forms and information to the General Mills, Inc. and Ford Motor Company so the employes of these respective firms could issue corrected bills of lading or corrections to the Carriers in reporting corrected weights that were detected through the audit of the shipper's records by the Bureau's City Auditors.

(b) Claimant L. W. Dykman, City Auditor, Kansas City, Missouri, Position No. 65, rate $15.14 per day, for 46 hours at time and one-half in addition to the amount already received account work being parcelled out to the employes of the General Mills, Inc.

(c) Claimant W. H. Henningsen, City Auditor, Kansas, City, Missouri, Position No. 64, rate $15.14 per day, for 57½ hours at time and one-half in addition to the amount already received account work being parcelled out to the employes of the Ford Motor Company.

EMPLOYES' STATEMENT OF FACTS: Claimants Dykman and Henningsen are regularly assigned to City Auditor Positions 65 and 64, respectively, rate of pay $15.14 per day, hours of assignment 8:00 a.m. to 5:00 p.m., Monday through Friday with Saturday and Sunday as designated rest days, Kansas City, Missouri.

The bulletins and assignments covering the respective positions are attached as Employes' Exhibits 1 through 4, inclusive.

move through to destination without the benefit of track scaling. Moreover, the shipper's billed description is accepted by the carriers for subsequent verification by one of our representatives.

In this case our City Auditors at Kansas City during the course of their audit of the records of General Mills, Inc. and Ford Motor Company detected errors in the weights furnished by each shipper. Thereafter, in the regular course of their duties they abstracted the information contained in the records of each firm and added to the abstract the correct weight of each shipment. Then, as is our custom with all shippers where errors are found, we directed these errors to the attention of the Traffic Manager so that he would be informed as to the result of our audit, and when situations such as this arise the shippers can and do issue corrected billing or furnish the carriers with such information as is necessary in order for the carriers to correct their billing to the proper basis, thereby collecting their freight charges on basis of gross weight of each shipment which is a tariff requirement as set forth in Uniform Classification No. 2, Rule No. 11, which, as previously stated, is lawful and binding on shippers as well as the railroads.

Gentlemen of your Honorable Board our Exhibit No. 11 contains a clear, forthright statement from the Traffic Manager of General Mills, Inc., and you will note it was he, Mr. Smith, who suggested that he be permitted to furnish the outbound carriers a list of the cars involved, which, by his own statement, eliminated a great deal of work for his company. Now how can any one state that we required or permitted the shipper to issue corrections to the carriers? Most assuredly we could not and would not require a shipper to do anything that was not of his own choosing and as to permitting the shipper to issue corrected information to the carriers how could we, as a railroad organization, undertake to prevent any shipper from doing that which he prefers to do?

Gentlemen, to say the least the basis on which this claim is predicated is purely imaginary. Surely if we were to be governed in our dealings with the shipping public as the Employes seem to think we should, then we would be acting arbitrarily. As the evidence we have submitted to your Honorable Board in this presentation will show, both the General Mills, Inc. and the Ford Motor Company elected to furnish each outbound road haul carrier at Kansas City, Mo. with correct information, which is their prerogative and is something over which we have absolutely no control.

It will be noted in our Exhibit No. 7, paragraph two, the General Chairman admits a shipper does have the right to issue a corrected bill of lading when he determines there was an error made in the original, and with that unqualified statement what further need be said, except we are confident that in considering this claim you will find that it is without merit and, therefore, must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Bureau is a service organization on behalf of Western Railroads and one of the services rendered by the Bureau is the negotiation of weight agreements whereby shippers are permitted to tender carload shipments of freight by preparing a waybill which describes the property to be transported and the correct weight, subject to verification.

The Bureau periodically sends its Auditors to review the shippers records in order to determine whether or not the shipper is using the correct weight, rate and description and where errors are found, the Auditor abstracts such

errors on a printed form, number CS-39. The shipper and the Bureau then check each item shown on this form usually to see if a mistake has actually been made.

The claimants are regularly assigned to positions of City Auditor at Kansas City, Missouri. The brief description of duties used in bulletining these City Auditor positions describes the duties thereof as follows:

> "The auditing of necessary records and the issuance of reports covering transit and weight agreement accounts to see the proper weight and descriptions are tendered the Railroads."

On February 9, 1954, Claimant L. W. Dykman completed an audit for a company in which he discovered 184 errors. He prepared the abstract form CS-39. Similarly, city auditor, W. H. Henningsen spent 136 hours checking the accounts of another company for a period from March 11, 1953 and discovered 345 errors. He also prepared abstract form CS-39, which form showed the usual information of car initial and number, waybilling number, billed weight and corrected weight for each car on which an error had been made.

The usual procedure after errors are discovered, is that the City Auditor then prepares a form known as CS-47 which sets forth the errors and this form then is presented to the shipper and adjustments are made through the company. In these two cases, however, the companies who were the shippers and who made the errors discovered by the City Auditors, handled the corrections directly with the carriers and the carriers assessed charges based on the weights and description contained in corrected bills of lading furnished by the aforesaid shippers. The carrier then, because of the fact that the shippers prepared their own corrected bills of lading, dispensed with the form CS-47. The claim of the claimants is based on the fact that the work of preparing this CS-47 form was dispensed with and the work was performed by other than clerks under the Clerk's Agreement and that they should be paid the time estimated to have been required to prepare this form CS-47.

There is no doubt that the preparation of CS-47 and the preparation of the other form is work to be performed by the clerks within the scope rule of their agreement with their carrier. This scope rule reads:

> "(a) These rules shall govern the hours of service and working conditions of that class of Clerical—Office Station and Storehouse employes of Western Weighing & Inspection Bureau, except as otherwise provided herein."

There is no doubt that the shippers themselves prepared whatever forms were necessary to make the adjustments based on the errors discovered by the Auditors when they made the audit and examined the original bills of lading. Much testimony and many exhibits were presented indicating that the practice has always been for auditors who prepare form CS-39 to make the correction on all of the errors found by their audit. This apparently is the first instance in which the shippers decided to prepare their own corrected bills of lading and adjust the matter directly with the carrier.

Information was given that the organization requested that a joint check of the work should be made by the carrier and the organization. The carrier refused to enter into such joint check. Prior awards of the board were cited which hold to the principle that the parties should "exert every reasonable effort to settle the dispute in conference" and that a joint check between the

parties requested by either party is one of the methods usually used for such purposes. (Awards 1256, 6361, 6657, 7350)

It is the opinion of this board that whether or not the joint check was made, the question involved herein must of necessity be decided on the facts and the merits of the case itself and then if it is found that the claim of the claimants is valid as against the carrier, a joint check may be made in order to assess the amount of time either required to prepare the CS-47 forms or the amount of time which should be assessed as penalty pay against the carrier. A discussion, however, on the merits of the claim is a necessity.

Conceded is the fact that preparation of the CS-47 form is work within the scope of the clerk's agreement and is work that is to be performed by members of the clerk's organization. It has further been testified that in no previous instance in this particular division has a CS-47 form been dispensed with and that in all prior cases of errors discovered, the auditors prepared a CS-47 form as part of the adjustment procedure with the carrier and the shipper. Here we have work within the scope of an agreement which has been performed by people outside of the membership of the organization. The organization cites Award No. 7094 wherein the Board held:

> "This evidence clearly indicates that a condition existed which required that certain work be done as soon as possible and that the Bureau did not desire it to be accumulated for processing at some future time. This is clear evidence that overtime would have been required to get this work done promptly. We think, therefore, that the use of the Traveling Agents when all the evidence is considered, was to absorb the overtime work of the City Auditors. (Awards 4499, 4500, 4646, 4690, 4692, 6153.)"

The facts in that case were that the carrier assigned traveling auditors to perform work that was normally assigned to auditors in other territories.

The attention of this Board has been called to a recent award being Award No. 8327 in which the board held:

> "* * * It is a fundamental principle that whether to have work done or not is in the carrier's sole discretion. I know of no decision, apart from those to be discussed, which have held a carrier obligated to have certain work performed. It is only when a carrier decides to have work performed that the rights of the employes to perform that work arises. If the wrong employe performs it, a violation of the agreement has occurred. That is the extent to which our decisions, in general, have gone. The scope rule protects Telegraphers from having their work taken by others."
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> "* * * No one is entitled to perform work that the carrier does not want performed by anyone. Neither the scope rule nor the train order rule is violated except when some employe other than a Telegrapher performs Telegrapher's work. For these reasons the claim will be denied."

The present case must be distinguished from the facts set forth in Award No. 7094 because in that case outsiders were assigned by the carrier to do certain work but in this the work was not done. In this case the carrier did not assign anybody to prepare a CS-47 form.

Numerous cases have been cited to the Board in which the main principle has been upheld that:

> "Such work as is reserved by the agreement to Respondent Carrier's employes can only be that which is within the Carrier's power to offer."

(Awards 2425, 4353, 4945, 5774, 5778, 8076 and others.)

It is the opinion of the Board that the order of the Board in Award No. 8327 is controlling in this matter in that the work which is the subject of the claim herein was not required by the carrier and no other employe of the carrier was assigned to perform the work for which the claimants claim compensation.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July, 1958.