

Award No. 9443

Docket No. CL-9110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD — SOUTHERN DISTRICT

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

1. Carrier violated the effective Agreement when it arbitrarily abolished Job No. 2 at Stonefort, Illinois, classified as Cleanout Laborer, January 26, 1956, and delegated the duties of that position to employees of the Will Scarlett Mine at Stonefort, Illinois.

2. That the Carrier be required to restore such work to the employees of our craft.

3. That Claimant, Mr. B. C. King, be compensated for wage loss on January 26, 1956, and each subsequent date thereafter until the violation is corrected.

EMPLOYEES STATEMENT OF FACTS: On January 6, 1956 the Carrier created a new position at Stonefort, Illinois classified a cleanout laborer, the requirements of which position was to clean coal cars placed for loading at the Will Scarlett coal mine, Stonefort, Illinois.

This new position was bulletined to the employees on the Illinois Division seniority roster. It was bid in by and assigned to Mr. B. C. King who held rights on the Cleanout Laborers Seniority Roster at Harrisburg, Illinois.

Mr. B. C. King worked this position regularly from January 6, 1956 to January 26, 1956 when the Carrier arbitrarily abolished the position and delegated the work to the employees of the Will Scarlett mine which is operated by the Stonefort Corporation, in violation of Rule 1 . . . Scope, of our rules and working conditions agreement effective July 22, 1922. Reprinted with revisions January 5, 1951.

POSITION OF EMPLOYEES: The rules and working conditions agreement provides that a seniority roster for the cleanout employees will be maintained. Copy of the current roster is attached and marked as Employees Exhibit No. 1. This seniority roster includes all employees engaged in cleaning of coal cars

jecting the Carrier to a liability brought about by factors outside of the Carrier's control. Obviously, the principles creating such a liability should not be loosely applied.

The Organization has failed to prove their complete ownership of the work involved, and since the Agreement in effect between the Clerks and the Carrier does not do so, the claim as presented must fail on that score.

Lastly, in the face of knowledge that their agreement does not insure their exclusive right to this work and nothing requires the Carrier to clean all cars, by their claim to the Third Division an apparent attempt is being made by the Employees to secure a desired rule without the operation of machinery duly set up whereby such changes are accomplished, i.e., by Section 6 notices and proper negotiation. Since the jurisdiction of the Third Division does not encompass such authority, claim must be denied in its entirety.

The Organization is fully aware of the position of Carrier, same having been clearly set forth in personal conferences on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant protests the abolition of a cleanout laborer's job at the premises of a mine company at Stonefort, Illinois and the delegation of its remaining duties to employees of another employer. It is contended that work may not be removed from an Agreement and "farmed out" to others.

The initial question is whether this work at this location was covered by the Clerks' Agreement.

Claimant contends that the Scope Rule (Rule 1) covers car cleanout laborers under:

"(3) Laborers employed in and around stations, storehouses, and warehouses.

This does not make the Agreement applicable to employees away from such installations. There is no showing that there is any such installation on the mine premises at Stonefort.

In 1946, the Organization and the Carrier entered into a memorandum of agreement governing the bulletining of clean out force jobs "at Harrisburg, Illinois", which is a station twelve miles from Stonefort. This apparently was the basis for the later inclusion in Rule 8, governing seniority rosters, of the entry:

"Harrisburg, Illinois

"One roster for station forces. One roster for cleanout gang."

Other location entries specify "One roster for labor" and make no mention of "cleanout gang".

Read in conjunction with the limited coverage for "laborers" contained in the language quoted from the Scope Rule, the Agreement, we conclude, does not generally recognize that car cleanout gangs come within the scope of this Clerks' Agreement.

Moreover, the recognition of the Organization as the representative of cleanout gangs at Harrisburg was not extended to Stonefort. The geographical limitation of the Scope Rule as applied to "laborers" makes this quite clear.

Prior to the time the position in dispute was created, the car cleanout work at the mine at Stonefort was done by mining company employes. The General Chairman inquired about the possibility of clerical and laborer's work at this mine. In a letter to the Carrier's Superintendent summarizing a telephone conversation on the subject, he wrote:

"As to the cleaning of the cars you stated that if this work was delegated to the Clean-Out-Gang at Harrisburg it would require that such employes would necessarily have to travel some 12 miles to the location. These employes are now required to travel some distance to clean cars at other mines and I do not believe they would object to going to new location to perform the service.

"I will be glad if you will survey this feature and if possible delegate the work of cleaning cars to the Harrisburg force instead of securing new employes at the locations."

There is no claim in the letter to the work by virtue of coverage of the "cleanout gang" at Harrisburg. To the contrary, there is an implicit recognition that the work is not so covered.

We conclude that the work in dispute is not covered by the Agreement. For that reason the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of May, 1960.