

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

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it arbitrarily without conference, negotiation or agreement of the parties, abolished the Supply Train and transferred the work in connection with the handling and delivering of store material to employees outside the scope of that Rules Agreement.

2. Carrier shall now be required to return this work to the scope and application of the Clerks' Rules Agreement to be performed by employees of the Store Department.

3. That employees C. R. Wheeler, J. C. Boyle, E. Marquardt, P. Klisanic, Don Crogan, M. F. Gibbs and J. R. O'Connell and all other employees affected by the abolishment and removal of this work from the scope and application of Clerks' Rules Agreement be compensated for all loss suffered retroactive to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: The following shows the Supply Train positions, and the occupant of those positions that were in effect in the Store Department immediately prior to September 1, 1949:

POSITIONS	OCCUPANT
Supply Train Storekeeper	— C. R. Wheeler
Asst. Supply Train Storekeeper	— J. C. Boyle
" " "	— E. Marquardt
" " "	— P. Klisanic
" " "	— Don Crogan
Supply Train Crane Operator	— M. F. Gibbs
	— J. R. O'Connell

clearly that the section forces assisted the Supply Train employees in the handling of supplies and also indicates the extent to which sectionmen and other Maintenance of Way employees handled scrap during the period the Supply Train was in operation.

Carrier's Exhibit "P" —

is copy of letter written by Mr. Morgan December 7, 1954 which outlines his experiences over the years with regard to the use of Maintenance of Way cranes and crane operators in the handling of scrap.

Carrier's Exhibits "Q", "R" and "S" —

represent statements made by various Maintenance of Way crane operators as to their experiences in connection with loading of scrap throughout the years, including those when the Supply Train was in operation.

Carrier's Exhibit "T" —

is copy of letter written by Roadmaster H. E. Schoech January 6, 1955 with regard to his experiences with the Supply Train. Mr. Schoech also indicates that sectionmen met the Supply Train and assisted the Supply Train men in the handling of material and he further indicates the extent to which section forces and other forces handled scrap while the Supply Train was in operation

We think the Carrier's exhibits will show conclusively that the Store Department employees have retained all work to which they are properly entitled and there has been no work to which they are entitled transferred to employees outside the scope of their agreement. By the claim which they are here submitting the employees apparently are seeking, by board award, to obtain an exclusive right to the delivery of material on the line and to the picking up and handling of scrap and these functions have never been performed exclusively by Store Department employees; in fact, their participation in such work has been limited as the record will indicate.

There can be no proper basis for the claim which the employees have submitted and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim has two essential elements: (1) the abolition of the Supply Train and (2) the transfer of duties performed by the Supply Train crew, which belonged to them under the scope rule, to employees outside the Agreement.

On September 1, 1949 the operation of the Supply Train was stopped. There is little controversy as to how its tasks were accomplished thereafter. The heart of the dispute is whether a transfer of duties from employees under the Agreement to employees outside the Agreement took place.

The Facts

(a) Operation of the Supply Train

For many years prior to September 1949 the Supply Train operated from Tomah, Wisconsin delivering gasoline, fortnite oil, maintenance stores, and stationery and miscellaneous small supplies to stations and work parties throughout the division, excluding some branch lines. The Supply Train also had cranes used to load metal scrap. Much of the scrap had been accumulated by maintenance forces and delivered by them to stations along the route of the Supply Train for collection by it.

The Supply Train made about three full trips a year, each consuming approximately four months.

(b) Operations After Abolition of the Supply Train

The record is clear that the Supply Train provided only a very small portion of the supply services in its area. Most supplies were provided by direct shipments to the points where they were needed.

After the termination of the Supply Train the various functions performed by it were handled in the following way:

(1) Gasoline and fortnite oil — All gasoline and fortnite oil were provided by local purchase and so required no employe handling before delivery to the Carrier at point of use. For a brief transitional period there apparently was some other method used but the record is deficient as to the practices actually employed. The record does contain the Carrier's August 1949 instructions as to deliveries after discontinuance of the Supply Train. The deliveries were to be made once every eight months in the tank cars formerly part of the Supply Train. It is not shown whether, where and how long this method was employed or that it involved use of employes outside the scope of the Agreement.

(2) Maintenance and Miscellaneous Supplies — Prior to abolition of the Supply Train most such supplies were shipped directly to the points of use by regular freight after the processing of requisitions and loading by employes within the Stores Department. This was the method employed for all supplies after the discontinuation of the Supply Train.

(3) Scrap Pick-Up — After discontinuation of the Supply Train scrap was no longer sent to nearby stations for later pickup by the cranes on the Supply Train. Instead the employes who formerly loaded it for transportation to these stations loaded it for transportation to Tomah, where upon arrival it was handled by Stores Department employes. In sum, the intermediate handling of scrap was eliminated completely.

The Effects of Supply Train Discontinuation

The brief description of operations after discontinuation of the Supply Train does not indicate that duties formerly performed by Store Department employes on the Supply Train were transferred to other employes outside the Agreement.

As to gasoline and oil, the work was no longer performed by employes. Other supplies were handled by Stores Department employes while the items remained within its jurisdiction, i.e., until shipped to the point of use. For the most part, if not completely, the duties performed by the Supply Train crane operators were eliminated and not transferred.

In similar cases the Board has found no violation of Clerks' Scope Rules. So in Award 3431 (Blake) it was observed:

"The claim is presented on the theory that employes of the Store Department are being deprived of work falling within the Scope Rule of the controlling Agreement. We do not think there is any substance to the claim. The supplies are now being delivered to the Mechanical Department in no less quantity than before. The only difference is in the points of delivery. There is no showing that Store Department employes have suffered any time loss because of this change.

"There must be a point in time and place where control of the Store Department over supplies passes to the department which uses them. * * * "

The record lacks any showing that employes outside the Stores Department and the Clerks' Agreement covering it performed work formerly performed by employes on the Supply Train. It follows that a violation of the Agreement has not been established.

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

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.