

Award No. 10626
Docket No. CL-9422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

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

1. Carrier violated the Clerks' Rules Agreement when it removed work covered thereby and assigned such work to an outsider and others who are not Store Department employees.

2. Carrier shall return all the work in connection with the hauling and disposing of garbage and rubbish from the Storage House adjacent to Passenger Station at Savanna, Ill., which is now being handled by employees of other departments or outsiders who hold no seniority on the railroad, to Store Department employees in Seniority District No. 118.

3. Carrier shall compensate employee R. W. Lewis at the Chauffeur rate of pay for the following and all subsequent days that work in connection with hauling and disposing of garbage and rubbish from the storage house adjacent to the Savanna Station is handled by an outsider or others holding no seniority in the Store Department or Seniority District No. 118.

3	hours on Nov.	5, 1955	at pro rata rate
5 1/4	" " "	6, 1955	at overtime rate
1 1/2	" " "	7, 1955	"
1 1/2	" " "	8, 1955	"
1 1/2	" " "	9, 1955	"
1 1/2	" " "	10, 1955	"
1 1/2	" " "	11, 1955	"
3	" " "	12, 1955	at pro rata rate
5 1/4	" " "	13, 1955	at overtime rate
1 1/2	" " "	14, 1955	"
1 1/2	" " "	15, 1955	"
1 1/2	" " "	16, 1955	"
1 1/2	" " "	17, 1955	"
1 1/2	" " "	18, 1955	"

form at Savanna, Illinois and then handled from the platform to the Storage Building by Car Department employes, is not work reserved exclusively by schedule agreement to Store Department employes. The only work in connection with the handling of garbage which Store Department employes had performed previous to the inauguration of the several new streamlined passenger trains about November 1, 1955 was the hauling of the cans of garbage, from not more than 4 local trains, from the Storage Building to the city dump. This required not more than 1' 30" each trip and the trip did not occur daily. These trips were made when the Store Department truck driver was available and within his assigned hours and no trips were made on Saturday and Sunday.

2. That effective November 1, 1955 when the Carrier arranged with the farmer to dispose of the garbage, the largest portion of the garbage came from the new transcontinental trains which had never previously been in existence on the Carrier's property, so naturally the Store Department employes never previously performed such work.

The employes rely on the first paragraph of Rule 1 (e) from which it will be noted that the inclusion of "* * * chauffeurs, truck drivers, * * *" was intended only to retain for these employes the right to work with these machines that they had previously performed. Employes within the scope of the Clerks' Agreement had never, prior to the inauguration of the several new streamlined trains, effective about November 1, 1955, handled garbage set off on the Savanna passenger platform from those trains and the Carrier had a perfect right to arrange with a local farmer to take the garbage from the Carrier's premises.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been submitted to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to November 5, 1955, Store Department employes were assigned to haul garbage and rubbish to a city dump from a storage house situated adjacent to passenger tracks at Savanna, Illinois. Chauffeur Position No. 103 performed this function Mondays through Fridays, generally on an average of every two or three days. Car Department employes first removed garbage containers from dining cars of passenger trains stopping at Savanna, four trains at most, and placed them in the storage house. Occasionally, the latter took the containers to another location on the Carrier's property and dumped and burned the debris there.

On or about October 1, 1955, passenger trains stopping at Savanna increased in number to ten or more, causing an increase in volume of garbage unloaded from dining cars. The Carrier now made arrangements with a local farmer to pick up cans of refuse in the storage building and dispose of them. This arrangement continued for approximately one month, during which period Claimant presented timeslips which were declined. Carrier then arranged to have Store Department again handle the garbage and rubbish from the storage house to the city dump. This, the Carrier asserted, was to eliminate any possibility of being penalized, "inasmuch as the work could be performed within their assigned hours and to prevent an unnecessary accumulation of claims", also because there was little or no additional expense involved.

Paragraph (a) of Rule 1—Scope—of Agreement between the parties effective September 1, 1949 provided in part:

"(a) These rules shall govern the hours of service and working conditions of the following class of employees, subject to exceptions noted below:

"Group 2. . . . Crane operators, Chauffeurs, Truck Drivers, Tractor Operators, Lift Truck Operators and operators of other automotive equipment and their helpers."

The first paragraph of Rule 1(e) provided:

"(e) The inclusion of 'Crane operators, chauffeurs, truck drivers, tractor operators, lift truck operators and operators of other automotive equipment and their helpers' in Group 2 of Rule 1(a) is intended to retain for these employees the right to perform the work with these machines that has heretofore been performed by these employees, and does not establish the right to perform such work now covered by other agreements."

The third paragraph of Rule 1(e) provided:

"Positions within the scope of this agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

Petitioner maintained that the Carrier violated the right of Store Department employees under Rule 1, to haul the garbage and rubbish from the storage house to the city dump, work usually and customarily performed by them and reserved to them, it asserted, irrespective of whether the work occurred during the regularly assigned work week or on rest days.

Carrier maintained that the handling of garbage and rubbish from the storage house to the city dump was not work reserved exclusively to Store Department employees; and that, effective November 1, 1955, the largest portion of the refuse came from trains never previously existent on its property, hence Store Department employees never previously performed this additional volume of the work.

So far as the claim may concern hauling of garbage and rubbish by Car Department employees from trains or the station platform to a disposal dump located on the Carrier's property, or on Claimant's rest days, the record did not disclose that Store Department employees ever handled cans of refuse to that location from the storage house nor that Car Department employees hauled from the storage house on Claimant's rest days. Therefore, consideration properly is narrowed to the claimed violation arising out of the Carrier's contracting out of the hauling from the storage house to the city dump during Claimant's regular assigned work days.

It was urged during consideration by the Board that hauling of refuse from the storage house to the city dump was not an item of work primarily or directly associated with common carrier functions and performed by the Carrier in its capacity as a common carrier, and that therefore the Carrier rightfully could detach this item and contract it out. In its ex parte submission, the Carrier maintained that this handling was not work reserved exclusively by schedule agreement to Store Department employees. On one occasion on

the property it went so far as to claim handling of garbage was not within the scope of the Clerks' Agreement. However, its principal reliance in opposition to Petitioner was upon the limited volume handled by Claimant prior to November 1, 1955 and upon the further limitation of his work to that of hauling from the storage house and not from the dining cars or platform, something done by Car Department employees. Furthermore, the Carrier returned to the Store Department the handling from the storage house to the city dump, after approximately one month, for the reasons stated above. There was no showing that the Carrier itself took the position, on the property, that the work in question was not a common carrier function. Therefore, the Board feels that such a position not first raised on the property with an opportunity by Petitioner to refute the same, has not been properly brought before the Board and should not be regarded as a defense.

It appears that only Store Department employees handled the garbage and rubbish from the storage house to the city dump for many years prior to November 1, 1955, and this was a substantial portion of Claimant's work. There was nothing described nor asserted about the work that would indicate a need for special skills or equipment. Furthermore, Claimant performed the work both before and after the temporary removal. Finally, the mere increase in physical volume occasioned by the increased number of passenger trains did not justify the removal of the work to an outside contractor. There was no showing that the determination as to whom the work belonged should rest upon the volume or amount of the work to be performed.

The Board concludes that the Carrier violated the first paragraph of Rule 1(e) by delegating the handling of garbage and rubbish during the period in question to another not covered by the Agreement. Therefore, the claim must be sustained. The Carrier should pay Claimant his pro rata rate for one and one-half hours for November 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, and each of Claimant's regular assigned work days thereafter and through November 29, 1955. This is consistent with the principles of paying at the rate the Claimant would have received if he had performed the work, and of not disallowing the claim because he did not lose any time as a result of the outside contractor's performing the work. Awards 3876 and 6063. It also reflects the time consumed for each trip to the city dump prior to November 1, 1955, not occurring daily, according to the Carrier, as well as the like daily number of hours for which claim was made—apparently for each of Claimant's regular assigned work days while the work was contracted out.

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 Carrier violated the Agreement to the extent set forth in Opinion.

AWARD

Claim sustained as set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.