

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, 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 has violated and continued to violate the Schedule Agreement effective September 1, 1949, when it failed and refused to allow the employees in their employment to perform the prescribed work (referred to as transit work) necessary at St. Louis, Missouri—East St. Louis, Illinois.

(b) The Bureau now be required to compensate the Claimants, Transit Clerks W. D. O'Connell, L. D. Crause and C. P. Manard, and their successors if there be any, for the equivalent number of hours of labor at the rate of pay attached to their regular assignments for the transit work performed by Transit Inspectors, Joint Transit employees and other part time employees, all of the Eastern Weighing and Inspection Bureau, retroactive to July 1, 1956, and continuing until this dispute is composed.

NOTE: Reparation due employees to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimant(s).

EMPLOYEES' STATEMENT OF FACTS: This dispute between the Western Weighing and Inspection Bureau and this Organization also involves the Eastern Weighing and Inspection Bureau. In furnishing the employees facts and position we shall refer to the Western Bureau as representing the Western Weighing and Inspection Bureau and refer to the Eastern Bureau as representing the Eastern Weighing and Inspection Bureau.

The National Mediation Board on April 11, 1946, Case Number R-1586 certified this Organization as being duly designated and authorized to represent the craft or class of clerical, office, station and storehouse employees of the Bureau for the purposes of the Railway Labor Act, which in this instance included all Western Bureau employees except those that through negotiations were later exempted from the Schedule Agreement. On March 18, 1947 this Organization served formal notice on the Western Bureau Management under Section 6 of the Railway Labor Act for the purpose of revising the five different Agreements and consolidating them into one agreement.

Therefore, as we view this claim we have reached the definite conclusion that it is without merit and should, therefore, be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced)

OPINION OF BOARD: In 1916 Western, Eastern and Southern railroads joined together to establish a Joint Transit Bureau in St. Louis. Its function: to handle and police all transit through St. Louis-East St. Louis. This Bureau was placed under jurisdiction of the Central Freight Association, Weighing and Inspection Bureau (whose name was changed twice in subsequent years and currently is Eastern Weighing and Inspection Bureau—or "Eastern Bureau").

All employees assigned to the Joint Transit Bureau have been Eastern Bureau men with a single exception. Since about 1920 one employee has been assigned by the Western Weighing and Inspection (Western Bureau), a service organization which performs weighing and inspection services authorized by Western Carriers.

Eastern Bureau employees are not represented by the Brotherhood of Railway Clerks. However, in 1946 the Brotherhood petitioned the National Mediation Board and (on April 11, 1946) was certified as bargaining agent for Western Bureau employees. Two years of intermittent negotiation followed; in 1948 an N.M.B. Mediator was called in and, on June 3, 1949, a mediation agreement was reached. The parties' first contract became effective September 1, 1949. Rule 1 (Scope) provides in relevant part:

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

In 1952 Petitioner's General Chairman brought to the Western Bureau's attention the fact that a majority of cars handled by Eastern Bureau employees at the Joint Transit Bureau were actually Western Carrier cars which, it claimed, should have been assigned to Western Bureau men. There is no evidence of any action on this charge; however, in April 1956 Petitioner's General Chairman submitted a written protest, stating in part that:

(1) Certain work of the Western Bureau was being performed by the Eastern Bureau; this work "should have been brought under the scope and application" of the B.R.C. Agreement when it was executed.

(2) Only about 25% of the cars handled by the Joint Transit Bureau were subject to the Eastern Bureau, although that Bureau had assigned three full-time and six part-time employees, as compared with just one full-time Western Bureau man.

(3) This disproportionate assignment of men had to be corrected since "this work had not been promptly brought under our Agreement at the time the Agreement was signed." Unless appropriate action was taken, claims would be filed.

When the Western Bureau declined to increase the number of men assigned to the Joint Transit Bureau, the Petitioner filed its formal claim on June 19,

1956. In this letter it reiterated its belief that since 75% of the cars processed by the Joint Bureau came from Western Carriers, a proportionate number of Western Bureau men should be assigned to perform the necessary work. The Brotherhood's General Chairman also noted: "It appears when our General Rules Agreement was signed on September 1, 1949, the Western . . . Bureau failed to take appropriate action in seeing that the work involved should have been assigned to employees under our agreement . . ."

Specifically, Petitioner claims compensation for Western Bureau Transit Clerks covering a number of hours equivalent to those worked on Western Carrier cars by Eastern Bureau Clerks assigned to the Joint Bureau.

The record, in our opinion, does not support Petitioner's claim that the disputed work falls within the Scope Rule of the Western Bureau's Agreement with Brotherhood of Railway Clerks. That Rule was negotiated to cover employees for whom Petitioner was certified as bargaining agent in 1946. At the time of certification no representation claim was made for Eastern Bureau employees assigned to the Joint Transit Bureau although, we must presume, their presence was known. No claim covering the work of these Eastern Bureau clerks was made during extended contract negotiations. Thus, when Petitioner's initial contract with the Western Bureau was signed, it was specifically limited in scope to "... employees of Western Weighing and Inspection Bureau . . ."

In light of a forty-year history of work assignments to Eastern Bureau clerks at the Joint Transit Bureau, it cannot be held that work performed by these men suddenly belonged to Western Bureau employees by sole virtue of a collective agreement which covered one man performing similar tasks. Certainly there is no evidence of mutual intent in this regard.

Moreover, since the Western Bureau is not an independent self-sustaining organization (it depends exclusively on Western Carriers for its authority), Petitioner's request, if granted, would have the effect of requiring that Bureau to increase both its jurisdiction and its expenses. In our judgment the Western Bureau does not have power, on its own, to grant such request nor does this Board. Stated simply, the Eastern Bureau, many years ago, was authorized by Western Carriers (among others) to have certain tasks performed, in connection with Western Carrier cars, by clerks assigned to the Joint Transit Bureau. This Board cannot now revoke or revise that grant of authority or substitute its own judgment as to how best to allocate personnel to the Joint Transit Bureau.

Basically, Petitioner's claim raises a question of representation. It is not certified to represent Eastern Bureau clerks assigned to the Joint Transit Bureau. It has never, so far as this record reveals, claimed to represent them. Neither did it claim jurisdiction over work performed by these employees until long after its contract was consummated (note the wording of Petitioner's letters to the Western Bureau in April and June 1956). Questions of representation or expanded contract coverage, clearly, are matters for either direct negotiation or submission to the National Mediation Board. They cannot be handled by this Adjustment Board.

Under the circumstances this 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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962.