

Award No. 12900
Docket No. CL-12602

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE SAINT PAUL UNION DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4957) that:

(1) The Carrier violated the rules and provisions of the Clerks' Agreement when on October 15, 16, 17, 18, 19, 24, 25, 26, 29, 30, 31, November 1, 6, 7, 8, 18, 19, 20, 21, 22, 23 and 24, 1959 and subsequent days, if there be any, Management at the Saint Paul Union Depot Company sublet the handling of the mail customarily and traditionally performed by employees of this company and falling within the provisions of their Agreement to employees outside of the Agreement, and

(2) That the Carrier shall now be required to compensate the following named employees and their successors, if there be any, for one day's pay at the rate of time and one-half of their regular rate for each of the above enumerated days and subsequent days, if there be any:

E. Augustine	I. C. McCluskey	M. H. Henk
E. W. Hendrickson	L. Mahler	J. L. Bamberry
E. A. Hendrickson	L. Papanicolaw	G. E. Nelson
Lewis Jensen	J. Weniewski	H. F. Payne
A. J. Bohlin	J. Sauter	R. W. Jacobson
E. J. Sandin	S. P. Francis	Geo. H. May Jr.
G. Glander	R. Jabs	A. Desch
E. Weisz	L. S. Hobrough	L. W. Waller
P. Coleman	J. Dreshow	H. M. Stellmacher
J. Caron	A. Rodriguez	A. Nagy
G. Bruski	H. M. Schleif	J. A. Bosel
J. Brenner	E. Peloquin	N. G. Holter
R. Luchsinger	H. J. Hopkins	L. A. Welling
J. Freschel	E. D. Hillyer	J. P. Ryan
E. Letourneau	O. R. Wallemberg	R. V. Johnson
J. Gagnier	E. A. Whitacre	E. E. Cromey
O. W. Garbe	F. W. Laterre	A. D. Rasmussen
R. Mussehl	B. J. LaBrache	J. F. Kriz
Emil Driz	G. W. Mahle	C. Schweickert
B. A. Sandstrom	J. S. Clayton	V. B. Johnson

OPINION OF BOARD: Respondent St. Paul Depot Company is a facility consisting of a passenger station and a mail and baggage department located at St. Paul, Minnesota. It is owned by eight Carriers, including the Milwaukee and the Great Northern Railroads. One of its functions is the handling and processing of United States Mail, the cost of which is shared by the proprietary Carriers which operate under contracts with the United States Post Office Department.

On October 15, 1959, cars containing mail began to be diverted from Respondent's premises to the Great Northern and Milwaukee Depots in Minneapolis. Apparently this was due to a backlog of mail at St. Paul and to avoid delay in handling and processing mail destined beyond St. Paul to points west.

Petitioner's complaint is that the diversion of mail customarily handled by covered clerical employees of Respondent company constitutes, in effect, a farm-out of work reserved to them by the Clerks' Agreement.

Respondent answers that it entered into no Agreement with any Carrier, including the Great Northern Railroad, to farm out the work; that the Post Office Department had sole and exclusive jurisdiction and control over the movements of mail into and out of Respondent's premises; that, therefore, it had to comply with the orders of the Post Office Department to divert the mail cars to Minneapolis.

The controlling and dispositive question here is one of fact. If, as alleged by Respondent, it had no alternative but to comply with the diversion order of the Post Office Department and that order was, in fact, issued, then it follows that there is no sound basis for the claim because the work was not subject to Respondent's control and could not, therefore, be held to fall within the Scope of the Agreement at the time it was performed. As the Board said in Award 8076 (Referee Bailer):

"Such work as is reserved by the Agreement to Respondent Carrier's employees can only be that which is within the Carrier's power to offer". (Cf. Awards 5774, 11002)

The record contains evidence of probative value going to the key issue presented. Respondent has introduced a letter from the Post Office Department, dated December 21, 1959, which confirms its contention that the Department ordered the diversion of the mail. The letter is addressed to Respondent's Vice President and General Manager and reads, in full, as follows:

"POST OFFICE DEPARTMENT
Minneapolis Regional Office
512 Nicollet Avenue
Minneapolis 2, Minnesota

"December 21, 1959

"Subject: Divert Unloading of Mail Cars to Minneapolis

"Mr. H. P. Congdon
Vice President and General Manager
St. Paul Union Depot Company
St. Paul, Minnesota

"Dear Mr. Congdon:

"This is to confirm my verbal orders to you which were given at 1:00 A. M. on October 15 after a survey of the mail on hand in the depot facility at that time.

"You will no doubt recall that you were ordered to divert, for an indefinite period and/or until all mail was current the unloading of cars to the Great Northern and Milwaukee Depots at Minneapolis. This was to clean out the backlog of mail on hand also to keep the mail moving in such manner as to eliminate delays.

"If you are now in a position to handle the mail without delays, you may consider this an official notice to cease diverting mails to Minneapolis. I wish to remind you, however, that any future delays to mail cannot be tolerated and if delays do occur steps will again be taken to remedy the condition.

"Very Sincerely,

"/s/ Gordon T. Foster

Gordon T. Foster
Distribution & Traffic Manager"

Petitioner offers no evidence to refute the aforesaid official statements of the Department. Instead it attacks the letter as having "obviously" been obtained by Respondent to support its defense because, Petitioner says, it was written after the diversion of cars begun and after the claim was filed. Its position appears to be based upon speculation, surmise and conjecture. Mere assertions, standing alone, are not proof (Award 8065). It seems to the Board that Petitioner had the same access to the Department as did the Respondent. It should not have been difficult for Petitioner to have contacted or communicated with the postal authorities in order to obtain evidence corroborating or controverting that submitted by Respondent. Since it failed to do so, the Board has no alternative but to find that the evidence offered by Respondent is valid and will prevail.

Having so found, it would serve no useful purpose to consider and discuss the other contentions of the parties. On the determinative question of whether the work involved was under the control of this Respondent, the answer, based upon the evidence of record, must be, and is, "No." Therefore, the Respondent cannot be held to have violated the Agreement and the claim will 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 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 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 17th day of September 1964.