**Award No. 13118**

**Docket No. CL-12937**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

William H. Coburn, Referee

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## PARTIES TO DISPUTE:

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

## NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5012), that:

1. The Carrier violated and continues to violate the Clerks' Agreement when employes of the Continental Grain Company at Norfolk, Virginia are used to perform the exclusive work of laborers under the scope of the Clerks' Agreement.

2. Claimants Freeman Harrison, Horace White, Alvin White, Rufus Graves, John A. Mearise, Charlie Smith, Ward Lee Moore, Melvin R. Smith, James R. Ellis, Roosevelt Hall, James W. Jackson, Willie J. Golf, John White, James W. Justice, Jr., and George A. Wiley shall now be paid eight hours pay at the pro rata rate based on the hourly rate of $2.10 for each work day retroactive 59 days from date of claim (April 12, 1960) and continuing for each work day until this violation is corrected.

EMPLOYES' STATEMENT OF FACTS: For many years the Carrier owned and operated grain elevators at its port facilities at Norfolk, Virginia. The employes used in this operation were fully covered by the Clerks' Agreement.

On April 29, 1952 the Carrier leased these grain elevators to the Continental Grain Company which is not a common carrier and is in no way connected with the Norfolk and Western Railway Company.

On the effective date of the above lease there were 38 laborers working at the grain elevators, all employes of the Norfolk and Western Railway Company, all fully covered by the Clerks' Agreement and all certified to the Interstate Commerce Commission as employes of the Carrier. The assigned duties of these laborers at the time the grain elevators were leased to the Continental Grain Company and subsequently to date are:

1. Tying up ships. (Employes' Exhibits "A" and "B")

2. Unloading and cleaning (dumping) cars. (Employes' Exhibit "C")

claimants in this case as set forth in the work records cited beginning on Page 10 of this submission was done in conformity with business conditions.

The Carrier's position as set forth in this submission clearly proves that there is no merit whatever in the claim in this case.

Denial of the claim in its entirety is respectfully requested.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 29, 1952, Carrier owned and operated grain elevators as port facilities at Norfolk, Virginia, in connection with export grain shipments and among the force employed at these grain elevators were grain elevator laborers who were covered by the then effective Agreement (July 1, 1944) between Carrier and the petitioning Organization.

On April 29, 1952, Carrier leased these grain elevators to the Continental Grain Company beginning May 1, 1952. The lease agreement provided, among other things, that the grain elevator laborers would continue in Carrier's employ under the coverage of the basic Agreement between Carrier and the Clerks' Organization.

With the leasing of the grain elevators the Grain Company employed a number of persons entitled "operators" and the International Union of Operating Engineers was certified as representative of such employes. Carrier, however, continued to employ grain elevator laborers at these grain elevators, although this force, as well as the force of operators, fluctuated according to business demands. Under date of April 12, 1960, claim was presented wherein it was contended the Agreement was violated because employes of the Grain Company performed work allegedly belonging exclusively to laborers under the Agreement.

The jurisdiction of this Division of the National Railroad Adjustment Board to consider the merits of this claim has been challenged. It is argued that Claimants' classification of "Laborers in and around . . . grain elevators;" under the Scope Rule of the controlling Agreement does not come within the crafts and classes of employes over which the Division has jurisdiction under the provisions of Section 3(h) of the Railway Act. That section provides:

> "Third division: To have jurisdiction over disputes involving station, tower, and telegraph employes, train dispatchers, maintenance-of-way men, clerical employes, freight handlers, express, station, and store employes, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employes. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organization of employes."

Under established rules of statutory interpretation, the foregoing language must be strictly construed as showing the intent of the framers to include within this precise grant of jurisdiction only those specific crafts or classes of employes specified therein. No others may be added by implication. Nor may this be done by agreement of the parties. (See Award 1697).

It is the Board's finding, therefore, that Claimants' classification cannot be said to be included within those crafts or classes of employes over which this Division has jurisdiction by reason of the statutory grant. Accordingly, we have no jurisdiction to consider the substantive merits of the claim. It will, therefore, be dismissed without prejudice.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the partles waived oral hearing;

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 is without jurisdiction of the claim here presented.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1964.