

Award No. 14420
Docket No. CLX-14720

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (GLX-148) that:

(a) The Agreement Governing Hours of Service and Working Conditions between R E A Express and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Dearborn Express Terminal, 836 South Federal Street, and General Office Building, 612 South Clinton Street, Chicago, Illinois, February 20, 1962 and on subsequent dates in permitting individuals employed by the Thomas Paper Company to perform work incident to the removal of old clerical records;

(b) The work shall be restored to employees whose names appear on the Seniority Roster covering those employed in the Auditor of Disbursements office at Chicago, Illinois and furloughed employees whose seniority rights were violated — in the order of availability — be compensated for salary and earnings loss sustained retroactive to and including February 20, 1962; and

(c) Carrier shall be required to make a joint check of the payroll records covering employees in the Auditor of Disbursements office to ascertain the names of employees involved together with amount of reparation due each employee affected.

EMPLOYEES' STATEMENT OF FACTS: Work incident to the removal and destruction of old records has been performed by employees with seniority rights on the roster maintained for those employed in the Auditor of Disbursements office covering the period of contractual relations between the parties beginning February 15, 1920. Stated differently the work as identified in the immediate preceding sentence constituted a part of the job content or duties of positions occupied by employees — in the Auditor of Disbursements office — rated at \$403.51 per month and assigned to employees involved as specified; e.g., on Bulletin No. 16 dated February 12, 1962. (Exhibit A.)

3. Since crates in which records could be dumped, were not furnished by the purchaser, which was his prerogative, the work formerly performed by our employes disappeared.
4. Group 40, employe R. C. Clark, was present during the baling and removal processes, checking or tallying records involved in the purchase.
5. In subsequent instances, where the purchaser of vintage records did supply crates in which records involved were to be packed, our employes continued to do such packing.

In view of the foregoing Mr. Larsen's declination must be and is sustained."

OPINION OF BOARD: On eight days in February and March 1962, employes of Thomas Paper Company removed IBM cards from shelves of R E A's Disbursements Department (Dearborn Express Terminal and South Clinton St.) in Chicago. Mr. R. C. Clark, an R E A employe whose bulletined duties included the moving, storing and handling of records for destruction, was assigned to insure that only the proper records were removed. The Paper Company provided four men on February 20, 3 on March 14, 3 on March 15, and 2 on March 20, 22, 23, 26 and 29. The record does not reveal how many hours these men worked.

The actual work consisted of removing the cards from shelves, baling them, and placing them on skids. The cards were stacked in a manner and to a height specified by the Paper Company. A variation of a criss-cross pattern was used in stacking so they would not give or sway in the course of shipment.

This was not the first time R E A had disposed of outdated records by selling them to purchasers of old paper. In the past, however, a different procedure had been followed. Purchasers had supplied large crates, into which R E A employes had dumped the cards, placed the crates on four-wheel trucks and then trucked the crates to a freight elevator.

Petitioner contends, in effect, that any work connected with procuring records from storage spaces or moving, storing and handling records for destruction, belongs to R E A employes covered by the Clerks' Agreement. We are dealing here, however, with a special kind of situation in which R E A has sold the IBM cards from the shelf as scrap and, consequently, is no longer their owner. The purchaser has a right to determine how he wants his purchases to be handled. If he is content to supply R E A with crates and have the cards just thrown in, that is his prerogative. If he is satisfied to have R E A men do this work, that again is his privilege. But, since the loose cards are his property, following the sale, the purchaser may also elect to use his own employes to pack and remove them in a prescribed manner. Petitioner's right to the work does not extend beyond the point where a purchaser assumes title. There is nothing in Petitioner's Agreement which insures that purchasers will always handle their scrap in a certain way. It may well be that R E A employes are entitled to do the handling and moving whenever such work is not performed by employes of a purchaser. But it has no justifiable claim to do work on a purchaser's property which the purchaser wants to do himself.

These findings are consistent with prior Board rulings regarding similar situations. See Awards 10826, 9580, 13857, among others. The claim must be denied.

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

That the parties waived oral hearing;

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 12th day of May 1966.