



Award No. 14707
Docket No. CL-14352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5382) that:

(1) Carrier violated the Clerks' Agreement at Shreveport, Louisiana, when it required employees not covered by the Agreement to perform work under the Scope Rule provisions thereof.

(2) Train Clerk B. A. Merendino be compensated for eight hours at the time and one-half rate of pay for each of the days of December 12, 19, 22, 23, 26, 30 and 31, 1961, and for subsequent dates on which a like violation occurs.

(3) That a joint check be made of Carrier's records to determine reparation due Claimant.

EMPLOYEES' STATEMENT OF FACTS: Mr. B. A. Merendino is regularly assigned to position of Train Clerk at the Shreveport Yard Office working 3:45 P. M., to 11:45 P. M., with off days of Wednesday and Thursday. On the dates involved in our claim Carrier required Southwestern Transportation Company Truck Drivers to check cars on the automobile ramp track in Bossier City, Louisiana, and telephone the numbers to the Yard Office. It is our understanding Switchmen require a check of these cars before pulling the cars from the ramp. These are the empty Tri and Bi-level cars which have been unloaded at the automobile ramp.

The work performed by the Southwestern Transportation Company Truck Drivers was originally assigned to the occupant of position of Claim-Utility Clerk, which was originally bulletined on Advertisement No. N-8 of March 1, 1960, issued by General Superintendent J. R. Holden, Pine Bluff, Arkansas, with hours 3:00 P. M., to 11:00 P. M., rest days of Sunday and Monday, with duties consisting of checking automobiles arriving TOF Ramp, Bossier City, Louisiana, making all exceptions, if any, maintaining record of arrival, spotting and unloading and posting car records in Yard Office, Shreveport Yard, and other related duties.

The position of Claim-Utility Clerk was abolished effective with end of tour of duty on July 24, 1961, in accordance with General Superintendent J. R. Holden's notice of July 21, 1961.

up with end of track where cars are being unloaded. The bottom level of the tri-level and bi-level cars are unloaded directly onto the unloading dock, the unloading device being moved out of the way. Carrier continued to use employes of the Southwestern Transportation Company to unload the automobiles from the multi-level cars.

It developed that there were so few claims on the automobiles Carrier was able to waive the inspections and consequently the Utility-Claim Clerk Position was abolished July 25, 1961.

Multi-level cars for the Bossier City unloading ramp arrived Shreveport on train #243, normally between 4 P.M. and 6 P.M. daily. As a rule no multi-level cars were received on Mondays. These cars were trained on the rear of the train with the tri-level cars in one group and the bi-levels in another. Shreveport yard crew had a list of the cars which had been compiled from a consist sent by a teletype from Pine Bluff, Ark., and as soon as No. 243 arrived, the yard crew took the multi-level cars to the Bossier City auto ramp and placed the tri-levels in one track and the bi-levels in another. Drivers of the SWT then unloaded all cars which were spotted and endeavored to complete this work prior to 11:00 P.M. The Shreveport yard engine which was assigned to switch industry tracks in Bossier City after 12 midnight pulled all empty multi-level cars from the automobile ramp tracks and took them to Shreveport where they were placed in a northbound train for return movement to East St. Louis.

On January 1, 1962, claimant B. A. Merendino, who was assigned as train clerk, Shreveport Yard Office, hours 3:45 P.M. to 11:45 P.M., Wednesday and Thursday off days, filed the present claim with General Yardmaster Falkner (Exhibit No. 1). Yardmaster Falkner declined the claim on January 31, 1962 (Exhibit No. 2), and claim was then appealed to General Superintendent Holden, February 11, 1962 (Exhibit No. 3). General Superintendent Holden denied the claim February 19, 1962 (Exhibit No. 4). Claim was further appealed and denied on appeal (Exhibits Nos. 5-9).

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective April 1, 1946, as modified by Supplemental Agreement dated July 22, 1949, and Memorandum of Agreement dated August 5, 1950, relating to the 40-hour week, copies of which are on file with the Board.

Exhibits Nos. 1 to 9, inclusive, are attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective at the end of the tour of duty on July 24, 1961, the position of Claim-Utility Clerk was abolished. Among other duties the clerk who had occupied the abolished position, kept a record of the cars unloaded and reported the same to the yard office.

After July 24, 1961, Carrier required Southwestern Transportation Truck Drivers "to furnish the yard office a list of such cars as were unloaded by them at the automobile ramp". This occurred on the dates mentioned in the claim. These truck drivers are not covered by the Clerks' Agreement. They are employed by an independent contractor.

Carrier contends that the work performed by the truck drivers does not belong exclusively to employees covered by the Clerks' Agreement; that industries also make lists of cars and switching lists to the yard crews; that the information supplied by the truck drivers was not for demurrage purposes.

It is true that Rule 1-Scope does not define or describe the work of the covered employees. In the absence of such specificity, Petitioner is required to establish that by history, custom and practice the work belongs to employees in the Clerks' Agreement.

The record shows, without contradiction, that the work which the truck drivers did on the dates mentioned in the claim was work which by history, custom and practice had been performed by the Claim Utility Clerk. There is no probative evidence that employees other than those covered by the Clerks' Agreement had done this work and there is also no evidence that employees of independent contractors had performed these duties. Whether the information supplied was or was not for demurrage is irrelevant.

All of the work in question was done on tracks owned by the Carrier. Whatever practice exists on property of industries is not applicable to this case.

It is also established that no work of this nature was performed on December 26, 1961.

Carrier also argues that the request for compensation "for all subsequent dates" is not a proper claim under Article V of the August 21, 1954 National Agreement. This is a continuing claim which is protected under Section 3 of said Article V of that Agreement. Even though the unloading of automobile cars may not be done every day, the dates when the work is performed is readily ascertainable from Carrier's records. Carrier has daily reports of the dates the cars are so unloaded by the truck drivers.

Petitioner has asked for compensation at the time and one-half rate. In considering a similar issue in Award 14174 we said:

"Only the appropriate remedy remains to be considered. We recognize that there are a divergence of holdings. A preponderance of the Awards hold, however, that claimants should receive pro-rata rather than time and one-half for the hours involved. We affirm the ruling of those Awards."

On the basis of the entire record we are obliged to hold that there is merit to the claim, but that compensation should be for all the dates mentioned in the claim except December 26, 1961, and for all subsequent dates on which a like violation occurs, but at the pro rata rate.

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 Carrier violated the Agreement.

AWARD

Claim sustained to the extent set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.