

Award No. 15920
Docket No. CL-16171

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5917) that:

(a) The Southern Pacific Company violated the Scope Rule of the Agreement at Douglas, Arizona, when on March 31, 1961, it discontinued a daily physical yard check at the Phelps Dodge Corporation's smelter and, in lieu, began compiling demurrage reports through use of yard check data furnished by employees of the Phelps Dodge Corporation who are not covered by the Agreement.

(b) The Southern Pacific Company shall be required to return the work of making yard checks to employees who have customarily and traditionally performed such service whenever required by the Carrier; and,

(c) The Southern Pacific Company shall now allow to J. O. Cruz, his substitutes and/or successors if any, eight (8) hours' additional compensation at Yard Clerk's rate for June 18, 1961, and for each date thereafter while the violation continues.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On March 31, 1961, Agent J. H. Walker issued the following instructions at Douglas, Arizona:

**"Douglas, Arizona
March 31, 1961**

"I hereby file claim for yard clerk's rate of pay for June 18, 1961 and each subsequent date that the Southern Pacific Company permits Phelps Dodge Corporation to make yard check at Phelps Dodge Smelter, Douglas, Arizona. This is work that comes under the agreement between the Southern Pacific Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees."

By letter dated August 31, 1961 (Carrier's Exhibit B), Carrier's Division Superintendent at El Paso denied that claim.

By letter dated November 3, 1961 (Carrier's Exhibit C), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent at El Paso in behalf of claimant for June 18, 1961 and subsequent dates. By letter dated December 18, 1961 (Carrier's Exhibit D), Carrier's Division Superintendent denied the claim to which by letter dated January 14, 1962 (Carrier's Exhibit E), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated February 16, 1962 (Carrier's Exhibit F), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated November 23, 1962 (Carrier's Exhibit G), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the claim of Organization that for many years Clerks:

"make a daily physical check of cars located within the yard of the Phelps Dodge Smelter approximately six miles from Douglas. Information obtained represented the official record and constituted the only report of record prepared to benefit the Carrier."

Carrier, on March 31, 1961, issued the following bulletin to the Train Crew Dispatcher:

"Effective immediately it will no longer be necessary that you make daily physical check of cars in smelter yard and at Calumet. You will continue to check Douglas industry tracks as in the past.

Train desk clerks will continue to secure an accurate check of all cars moving from Douglas to the Smelter and of those returning.

Telegraphers must see that lists of cars moving between Douglas and the Smelter are secured daily and check them against PD Form 200 'transfer List' for demurrage purposes.

/s/ J. H. Walker"

Organization states that concurrent with the elimination of the yard check, Carrier began using the information shown by the Phelps Dodge Corporation in compiling its records and reports.

It is Carrier's position, however, in this record that, effective March 31, 1961 the daily ground check by Carrier's yard clerk at the Phelps Dodge

Smelter Yard and at Calumet siding was discontinued, it having been determined that the daily switch list of cars moving to and from the Phelps Dodge Smelter Yard compiled by Train Clerks at the yard office was sufficient for preparing demurrage records. (Emphasis ours.)

A long line of Awards of this Division, among them 12419 (Coburn); 13490, 13328 (Dorsey); 13048 (Wolf); have held:

"There should be no question that Carrier management is free to determine the way in which the work and operations are performed and conducted in the interests of economy and efficiency except insofar as that freedom may be limited by law or agreements with the representatives of its employees . . ."

As a matter of fact, Carrier's March 31, 1961 order, here subjected to claim designated that Train Desk Clerks "will continue to secure an accurate check of all cars moving from Douglas to the Smelter and of those returning."

Carrier states that it eliminated certain work of having its employees make a daily ground check of cars, which in its judgment, was no longer necessary for its operations.

The Phelps-Dodge plant was the only industry that had cars switched either to the Smelter Yard or to Calumet siding, which made it a simple matter of developing records for demurrage purposes by reviewing those records prepared by Train Clerks which identified the list of cars handled by yard crews to and from the Phelps Dodge plant each day.

We agree with argument offered in Carrier's behalf that there is no evidence in this record to show that any work of the Carrier was transferred to employees of Phelps Dodge Corporation; the physical check made by the industry on its own property was for its benefit and at its expense. (Award 5822 — Guthrie.) What Carrier did here eliminated a function of its own that it deemed was no longer necessary. Award 12947 (Wolf).

There is no evidence in the record to show that any work of the Carrier was transferred to the Phelps Dodge Corporation, as alleged.

Award 13923 (Dorsey) held that where the scope rule (as here) is general in nature, the Organization laying claim to specific work has the burden of proving that the employees covered by the Agreement have historically and exclusively performed the work on the property.

Carrier points out that when it discontinued the physical check of cars, "information for demurrage reports was available from Carrier's own records. The report furnished by the shipper merely augmented Carrier's records and had been supplied for many years."

It is apparent that the work involved in this Claim — Yard check data — is common to many crafts and classes of employees, and exclusive to none.

The Organization has failed to meet its burden of proof that Carrier's action violated the agreement.

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 31st day of October 1967.