

Award Number 17963

Docket Number CL-18263

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6584) that:

1. The Carrier violated and continues to violate the Clerks' Agreement and Memorandum Agreement of April 16, 1962 as implemented, when on or about April 9, 1965 it contracted out the work of unloading diesel fuel at the Shaffers Crossing Store, Roanoke, Virginia.
2. The senior available furloughed Group 4 employee shall now be paid a pro rata day's pay at the regular rate established for the position of Laborer at the Shaffers Crossing Store for each day the work involved herein was performed by persons other than employees entitled to perform said work under and within the rules of the Clerks' Agreement and the April 16, 1962 Agreement. The claim contemplates that on any day it should develop that there was no furloughed employees available, regularly assigned employees to be designated by the Organization shall be additionally compensated by one day's pay at the applicable time and one-half rate of pay. Claim is in addition to any other compensation paid employees on whose behalf claim is filed and this claim shall continue until all the work removed from Group 4 employees in violation of the Clerks' Agreement is properly restored to Group 4 employees who are entitled to perform same.

EMPLOYEES' STATEMENT OF FACTS: When this Carrier converted from steam to diesel motive power in 1957 it began storing diesel oil in two storage tanks located just west of its Shaffers Crossing Storehouse. From this time and until about April 9, 1965, these tanks were supplied from railroad tank cars. A Group 4 Stores Department employee was regularly assigned at this location from 7:00 A.M. to 3:30 P.M., Monday through Friday, and periodically a Group 4 Stores Department employee was used from 3:30 P.M. to 11:30 P.M. to unload diesel fuel oil. These employees unloaded on an average of eight to ten tank cars daily and performed all work in connection therewith, such as; reading storage tank gauges and reporting amount of oil in each tank, checking car numbers and bills to ascertain that cars contained diesel fuel oil, opening car dome, taking samples, checking for water and foreign matter, tagging cars, inserting unloading spout, setting meter count, turning on pump, taking meter reading after

reports of the oil companies as to the number of gallons delivered each day, and no longer requires the metering and recording by its own employees of fuel oil deliveries.

Moreover, the work of reading the ladder type gauges on the two storage tanks as referred to in Item 8 commencing on Page 5 hereof, was discontinued and has not been required of anyone since February 10, 1965.

The work of collecting samples of fuel oil for subsequent examination and an analysis by the Carrier's Chemical Laboratory is still being performed by a laborer from the Stores Department Facility at Shaffers Crossing on the following basis:

A sample of oil is taken only from the first truck load of oil received each day from each of the delivering oil companies. On each day each oil company notifies the Stores Department Facility at Shaffers Crossing by telephone when it dispatches the first truck load of fuel oil from its plant. The laborer is then sent from the Stores Department Facility at Shaffers Crossing to the site of the new pump, and he collects the sample of oil from each tank truck from which a sample is to be secured. He attaches to the sample bottle a tag marked with appropriate identification, and he then returns the sample bottle to the office of the Stores Department Facility at Shaffers Crossing for subsequent forwarding to the Chemical Laboratory.

The Employees filed the following claim:

"That the Carrier violated the current Clerks' Agreement, particularly Rules 1, 2, 3, 5, 12, 39, 44, 49 and 65; also Agreement of April 16, 1962 as implemented, when on or about April 9, 1965 it contracted out the work of unloading diesel fuel oil at the Shaffers Crossing Store, Roanoke, Virginia.

"The senior available furloughed Group 4 employee shall now be paid a pro rata day's pay at the regular rate established for the position of Laborer at the Shaffers Crossing Store (currently \$2.4528 per hour) for each day the work involved herein was performed by persons other than employees entitled to perform said work under and within the rules of the current Clerks' Agreement and the April 16, 1962 Agreement. The claim contemplates that on any day it should develop that there was no furloughed employees available, regularly assigned employees to be designated by the Organization shall be additionally compensated by one day's pay at the applicable time and one-half rate of pay. Claim is in addition to any other compensation paid employees on whose behalf claim is filed and this claim shall continue until all the work removed from Group 4 employees in violation of the Clerks' Agreement is properly restored to Group 4 employees who are entitled to perform same."

The Carrier declined the claim.

OPINION OF BOARD: The principal issue is whether the Carrier subcontracted out work which belongs to employees covered by the Clerks' Agreement. Where diesel oil purchased from four oil companies was previously delivered in tank railroad cars, it is now delivered in fuel trucks by a trucking company hired by the oil companies. Where a laborer heretofore read storage tank gauges, checked cars, took oil samples, inserted unloading spout, turned on the pump and took meter readings which he delivered to the office, a truck driver now connects the flexible hose to a new pump, flips the electric switch and unloads the oil. The new pump has no oil

meter. The oil is metered into the trucks at the plants of the oil companies. The driver takes the delivery tickets showing the number of gallons delivered to Carrier's Stores Department Facility. The whole procedure of unloading the oil is more simplified. A laborer still takes a sample of the oil delivered from the first truck load delivered each day. Because of the installation of the new pump some of the work previously performed by the laborer has been eliminated.

The Carrier and the contracting oil companies alone have the sole right to determine how, when and who are to deliver the oil. Unless circumscribed by law or contract, Carrier has the right to install new equipment, prescribe how work is to be performed and in general to improve the efficiency of its operations. The mere fact that a laborer had unloaded the oil from railroad tank cars does not oblige the Carrier to have the same employe unload fuel trucks. Employees of the trucking Company have complete control of the fuel until delivery is accomplished. And the vending oil companies have the right to select how the fuel is to be delivered. There is nothing in the agreement between the parties which limits or circumscribes these rights.

No employees were furloughed as a result of the new method of delivery. The laborer who formerly unloaded the railroad tank cars is performing work in the Stores Department Facility where he holds seniority. No employe was adversely affected.

Attaching and detaching a hose to an oil pump and turning an electric switch on and off is not work which belongs exclusively to employes under the Clerks' Agreement. Employees have not shown by credible, convincing evidence that this work belongs exclusively to them.

For the reasons stated, we are obliged to conclude that there is no merit to the claim. Since the claim fails on the merits, there is no need to consider and resolve the procedural issues raised by the Carrier.

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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1970.

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