

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22509
Docket Number CL-22599

John J. Mangan, 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-8583) that:

Claim No. 1

1. Carrier violated the Agreement between the parties when on January 20, 1977, it caused, required or permitted employes not covered by the Clerical Agreement to transfer lading from car PC 272131.

2. Carrier shall now be required to compensate Laborer J. W. Choate one (1) day at the time and one-half rate of pay in addition to any other compensation he may have earned on that date.

3. Carrier violated the Agreement between the parties when on January 20, 1977, it caused, required or permitted employes not covered by the Clerical Agreement to perform the duties of Laborer at Bluefield, West Virginia by unloading material from car PC 275131 loaded with Ford parts.

4. Carrier shall now be required to compensate Laborer J. D. Sawyers for eight (8) hours at the time and one-half rate of pay in addition to any other compensation he may have earned that day.

5. Carrier violated the Agreement between the parties when on January 20, 1977, it caused, required or permitted Laborers from the Motive Power Department, not covered by the Clerical Agreement, to perform Laborers work in the CT Department by unloading and reloading car PC 275131.

6. Carrier shall now be required to compensate Laborer D. W. Leedy for eight (8) hours at the pro rata rate in addition to any other compensation he may have earned that date.

Claim No. 2

1. Carrier violated the Agreement between the parties when on March 23, 1977, it caused, required or permitted Foreman S. L. Dempsey and Laborer H. D. Smith from the Motive Power Department, employees not covered by the Clerical Agreement to transfer the lading from CB&Q 24822 to N&W 281111.

2. Carrier shall now be required to compensate Clerk J. R. Tyree for eight (8) hours at the pro rata rate in addition to any other compensation received on that date.

Claim No. 3

1. Carrier violated the Agreement between the parties when on March 23, 1977, it caused, required or permitted Foreman S. J. Dempsey and Laborer H. D. Smith from the Motive Power Department, employees not covered by the Clerical Agreement to transfer the lading from CB&Q 24822 to N&W 281111.

2. Carrier shall now be required to compensate Clerk J. W. Choate for eight (8) hours at the pro rata rate in addition to any other compensation received on that date.

Claim No. 4

1. Carrier violated the Agreement between the parties when on August 27, 1977, it caused, required or permitted Foreman and Laborers from the Motive Power Department, employees not covered by the Clerical Agreement, to perform duties of CT Department Laborers by transferring lading from car TTX 301582 and Vans RCZ 290069 and TPZ 2041 account of load shifting.

2. Carrier shall now be required to compensate Laborer T. B. Billings for eight (8) hours at the pro rata rate of pay in addition to any other compensation received on that date.

Claim No. 5

1. Carrier violated the Agreement between the parties when on August 27, 1977, it caused, required or permitted Foreman and Laborers from the Motive Power Department, employees not covered by the Clerical Agreement to perform duties of CT Department Laborers by transferring lading from car TTX 301582 and Vans RCZ 290069 and TPX 2041 account of lading shifted.

2. Carrier shall now be required to compensate Laborer R. E. Elliott II for eight (8) hours at the pro rata rate of pay for this date in addition to any other compensation received on that date.

Claim No. 6

1. Carrier violated the Agreement between the parties when on March 23, 1977, it caused, required or permitted Foreman and Laborers from the Motive Power Department, employees not covered by the Clerical Agreement to perform duties of CT Department Laborers by transferring lading from car CB&Q 24833 to N&W 281111.

2. Carrier shall now be required to compensate Extra Clerk J. R. Tyree for eight (8) hours at the pro rata rate of pay for this date in addition to any other compensation received on that date.

3. Carrier violated the Agreement between the parties when on March 23, 1977, it caused, required or permitted Foreman and Laborers from the Motive Power Department, employees not covered by the Clerical Agreement, to perform duties of CT Department Laborers by transferring lading from car CB&Q 24833 to N&W 281111.

4. Carrier shall now be required to compensate Laborer J. W. Choate for eight (8) hours at the pro rata rate of pay for this date in addition to any other compensation received on that date.

OPINION OF BOARD: The Statement of Claim in this case consists of six (6) numbered claims. However, when the entire statement of claim is reviewed, we find that we are dealing with three (3) separate claim dates, namely:

January 20, 1977 (Claim No. 1)
March 23, 1977 (Claim Nos. 2, 3 and 6)
August 27, 1977 (Claim Nos. 4 and 5)

We also see that Claim No. 6 is an exact duplicate of Claim Nos. 2 and 3.

On January 20, 1977 certain lading was adjusted on railroad car PC 275131 at Carrier's Bluefield, West Virginia terminal. To accomplish the adjustment of the lading, Carrier utilized Claimants Choate and Sawyers along with a qualified fork lift operator from Carrier's Motive Power Department.

On March 23, 1977, it was necessary to transfer lading from car CB&Q 24833 to car NW 281111 at Bluefield. On this occasion Carrier used Claimant Choate along with two extra clerk-laborers who worked with a foreman and a qualified fork lift operator from the Car Department.

On August 27, 1977, car TTX 301582 was shipped by Car Department forces at Bluefield, West Virginia for shifted lading. The car was moved to the repair tracks where Car Department employees repositioned the trailer vans on the flat car.

Petitioner argues that "the duties of transferring lading of damaged cars at Bluefield, West Virginia has been and is work belonging exclusively to Clerical Employees at that location to the exclusion of all others."

Carrier contends that such work is not within the exclusive province of clerical employees on this property.

From our review of the factual record in this case it is not necessary that we address ourselves to this "exclusivity" argument.

The situations which occurred on January 20, 1977 and August 27, 1977 did not involve "transferring lading". Rather on January 20, 1977 lading was adjusted and clerical employees were utilized; while on August 27, 1977, trailer vans were repositioned on a TTX car on the shop track where the necessary equipment to reposition such vans is located.

The situation on March 23, 1977 did involve a transfer of lading, however, clerical employees were used to perform the service.

In short, petitioner has failed to prove that any "CT Department" work was performed by "Motive Power Department" employees on any of the dates in question. Contrary to petitioner's argument that " * * * he (Assistant Superintendent DeCamp) removed them (clerical employees) from performing the work of transferring lading from damaged cars and had Master Mechanic R. L. Austin from the Motive Power Department furnish sufficient laborers from that department to transfer the lading.", the facts of record show that when lading was transferred only a qualified fork lift operator from the Motive Power Department was used in conjunction with the clerical employees from the "CT Department".

Based on these facts, there was no violation of the clerical employees rights on the dates here involved. We will deny the claim as presented.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.