

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10339) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California, on June 18 and 20, 1986, when it failed and/or refused to call C. D. Garcia, et al., to protect overtime on June 18 and 20, 1986; and

(b) Claimant Garcia and/or the Employees herein named shall be now compensated eight (8) hours at the time and one-half rate of Claimant(s) regularly assigned position(s) in addition to any other compensation received for the days under claim as a result of such violation:

C. D. Garcia	R. D. Norgan	F. L. Bonilla
R. Bautista	J. S. Gallegos	T. E. Bingham
L. E. Ellis	J. A. Valadez	G. D. Scheetz

(c) Proper compensation for the available Claimant(s) herein named to be determined by a joint check of the Carrier's payroll and other records."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts of this case are set forth as follows: On June 18, 1986, the lading in Trailer REAZ 653183 was transferred into XTRZ 256972. The trailer contained 90 bales of cotton with a total weight of 40,000 lbs. On June 20, 1986, the lading in mechanical refrigerated boxcar FGMR 11967 was transferred into FGMR 12208 on account of mechanical failure. The load consisted of 50 lb. plastic bags of carrots, total weight of 2,500 lbs. This work was performed by the Naddell Transfer Company.

It is the Organization's position that said work belonged to clerical employees under the Agreement particularly Rules 1, 2, 4, 5, 6, 11, 14, 25, 26, 32, 47 and also under the Barstow Transload Agreement of July 22, 1976.

Carrier contends that it had the right to use an outside contractor since said work was performed by other craft employees over the years, such as Carrier maintenance of way forces and also that said work was not covered under the extant Scope Rule (Rule 1). It further maintains that the July 22, 1976 Barstow Transload Agreement did not exclusively reserve this work to clerks, since it merely provided an opportunity for interested clerical employees to perform available transloading work. It points out that on the days of the asserted violation there were only two (2) clerical employees available on the transloading list, which was insufficient for the work needed and there were no off-in-force reduction employees available.

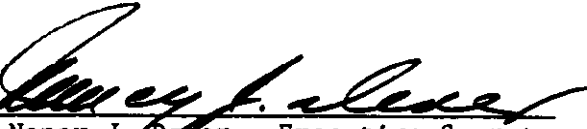
In considering this case, the Board concurs with Carrier's position that said work did not accrue exclusively to clerical employees under the Scope Rule or by virtue of any systemic past practice. However, the parties consummated a specific location agreement at Barstow, California, whereby an Extra Board was established to handle transfer or transloading of cars. Since other crafts performed this type of work on the property, we must presuppose that the parties contemplated some form of clerical exclusivity at Barstow, otherwise it would be illogical to enter such side agreement. This is further evident by the provision allowing either party to cancel the Agreement upon a ten (10) days notice. Accordingly, the work should have been performed by clerical employees, absent unusual or emergency conditions. In reading the Barstow Transload Agreement, Item 3 thereof supports the Organization position that employees could perform this work on an overtime basis. Item 3 reads: "Employees that are performing work of transferring or transloading shipments shall be released from this work sufficiently in advance of the starting time of their assignment to allow them to prepare for and work their assignments." Item 5 provides that if there are not sufficient applications from employees holding title to a position to protect this work, Carrier may use employees that are off-in-force reduction. Since there has been no showing that Claimants did not serve written notice to protect transfer work at Barstow and since there has been no compelling showing that said work could not be performed by these clerical employees and since Item 4 of the Barstow Agreement provides that employees holding title to an assignment shall be paid the rate of their assignment while transferring or transloading shipments, the appropriate number of employees named in the Statement of Claim shall be entitled to two (2) hours compensation at the rate of their assignment for each of the two (2) claimed dates. The number of named Claimants entitled to compensation will depend upon the number of employees utilized by the contractor on the claim dates; such number to be determined by a joint check of the Carrier's records. In the absence of hard information indicating how long the disputed work was performed this remedy reasonably addresses the violation of the July 22, 1976 Barstow Transload Agreement. In closing the Board takes judicial notice that Carrier cancelled this Agreement on February 1, 1989.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.