

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES**
NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim that checking yards of the Municipal Belt Line Railway of Tacoma, Washington, should be performed by Northern Pacific employes, Claim based on Rule 1 of Northern Pacific Clerks' Schedule."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties: "The Municipal Belt Line Railway of Tacoma is owned and operated by the City of Tacoma. This Railway serves industries in the city of Tacoma and the Port of Tacoma. This Railway was built in 1923. The Municipal Railway is not a per diem road; checks of cars on its tracks are made by the railways serving Tacoma for the purpose of assessing demurrage on cars delivered to the Municipal Railway. From 1923 to 1925 each railway serving Tacoma made its own check of cars on the Municipal Railway. From 1925 to 1931 the C. M. St. P. & P. Ry. made a check of the Northern Pacific cars on the Municipal Railway. From 1931 to January 1935, the Northern Pacific made check of its own cars. Effective January 1935, the C. M. St. P. & P. again made check of Northern Pacific cars on the Municipal Railway."

There is in evidence an agreement between the parties bearing effective date of August 15, 1922, and the following rules thereof are cited:

"**SCOPE—EMPLOYES AFFECTED—RULE 1.** These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

"(1) Clerks—

"(a) Clerical workers;

"(b) Machine operators.

"* * * *"

"**QUALIFICATIONS.—RULE 2.** (a) Clerical workers—Employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work.

"* * * *"

"**SENIORITY DATUM.—RULE 3.** Seniority begins at the time employee's pay starts on the seniority district and in the class to which assigned.

"Where two or more employes enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective rank of such employes and advise the employes affected."

"**CLERICAL DATING.—RULE 4.** Employes will rank as clerks from date assigned to clerical positions."

"**PROMOTION BASIS.—RULE 5.** (a) Employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.

"NOTE.—The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.

"* * *"

"BULLETIN.—RULE 11. New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employes affected, for a period of five (5) days in the districts where they occur; bulletin to show location, title, hours of service, and rate of pay. Employes desiring such positions will file their applications with the designated official within that time, and an assignment will be made within five (5) days thereafter; except that in the general offices at St. Paul and Seattle positions will be bulletined for a period of three (3) days and an assignment will be made within three (3) days thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined.

"The provisions of this rule shall apply to all positions or vacancies except that of truckers and similarly rated or lower positions, provided, however, the senior employe in this class of service will be given an opportunity to exercise his seniority rights to preferable shifts when a new position or vacancy occurs."

"DATE EFFECTIVE AND CHANGES.—RULE 93. This agreement shall be effective as of August 15, 1922, superseding all previous rules and rulings, and shall continue in effect until it is changed as provided herein or under the provisions of the Transportation Act, 1920.

"Should either of the parties to this agreement desire to revise or modify these rules, 30 days' written advance notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon."

POSITION OF EMPLOYES.—Employes contend that the checking of tracks for Northern Pacific records is work which should be done by Northern Pacific employes. In making this yard check the C. M. St. P. & P. employe doing the work uses Northern Pacific forms, known as yard checks or on hand reports. This fact and the fact that this work has been done by Northern Pacific employes for a number of years, they claim sustains their contention.

POSITION OF CARRIER.—As stipulated in the joint statement of facts, the Municipal Belt Line Railway of Tacoma is a separate and distinct railway being owned and operated by the city of Tacoma. Northern Pacific employes do not hold seniority rights on the Belt Line Railway and Belt Line Railway employes do not hold seniority rights on the Northern Pacific Railway. Northern Pacific Clerks' agreement does not give the Northern Pacific employes the right to perform service on another railway. That Northern Pacific employes checked cars on the Belt Line Railway from 1923 to 1925; C. M. St. P. employes performed this work from 1925 to 1931; Northern Pacific employes again performed this work from 1931 to 1935, and C. M. St. P. & P. employes again performed this work commencing in 1935. That there was no claim made that it was not proper for the C. M. St. P. & P. employes to perform this work from 1925 to 1931. That there was no violation of the rules cited by the employes.

OPINION OF BOARD.—The issue in this case is whether or not the carrier is obligated to employ men to do checking at the point where this Belt Line Railway is located or whether they can transfer this work to employes of another carrier.

We believe that it is clear from the record that the work in question was the work of this carrier, the Northern Pacific Railway. The Municipal Belt Line Railway is not a per diem road and kept no records for demurrage or other purposes. The carriers in Tacoma who must have such records therefore do their own yard checking. The Northern Pacific Railway is one of these carriers. The work in question is necessary to the Northern Pacific Railway in the performance of its functions as a common carrier. It must make a daily check of its cars occupying the tracks of the Municipal Belt Line.

It is the opinion of the Board that the type of work in question is clearly clerical work within the meaning of Rule 1. It is also clear from the record that this clerical work falls within Rule 2 (a). Therefore Rule 5 (a), 11 and the other rules cited by the employes are applicable to the situation herein.

The only question is whether or not the farming out of the work which is Northern Pacific work is a violation of the Agreement. We believe it clear to be such a violation.

The language of Referee Spencer in Award No. 180, Docket CL-129, is particularly applicable:

"The Referee cannot agree with the contention of the carrier that there is nothing in the Agreement between the parties which prohibits it from turning over 'its perishable freight inspection and cooperation work to a railroad bureau, which it is customary to do.' This contention ignores two basic facts. In the first place, it ignores the fact that the existing agreement, when negotiated, embraced all of the positions involved in the present dispute. In the second place, it ignores the fact that the first sentence of Rule 1 of the Agreement definitely states that 'these rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below.' This language, fairly construed, most certainly prohibits the carrier from removing positions from the operation of the Agreement except in the manner therein provided. If the language in question does not impose this restrictive obligation upon the carrier, then indeed, the whole agreement is meaningless and illusory."

The instant claim clearly falls within the rule laid down in Award No. 180 and, therefore, the action of the carrier here in contracting out the checking work done at the yards of the Municipal Belt Line Railway is clearly in violation of the Agreement.

The following decisions are also in accord with the conclusion we have reached herein:

Award 323.

Award 331.

Award 360.

Award 364.

Therefore the claim of the employees should be sustained.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated the agreement between the parties, especially Rules 1 and 93.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON

Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1937.