

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL CO.

STATEMENT OF CLAIM: "Claim of employes that position of Tractor Operator should have been bulletined to the employes in the Mail and Baggage Department May 20, 1936, and claim that said position shall now be bulletined and assigned in accordance with the Rules of the Clerks' Agreement, and further that successful applicant and others directly affected shall be reimbursed for all net wage losses retroactive to May 25, 1936."

FACTS: In the summer of 1934 there was inaugurated on the property of this carrier the practice of pre-cooling passenger train cars by the use of pre-cooling machines in charge of electrician helpers. Tractors were used for the purpose of moving the pre-cooling machines from car to car, and for hauling ice from the supply point to the pre-cooling machines. Pre-cooling was carried on over two shifts, ending at 11 P. M. or midnight, and the claim in this case involves the shift ending at 11 P. M. or midnight. In 1934, the tractor used in connection with the pre-cooling work was operated by an employe coming under the Clerks' Agreement.

In 1935 the tractor was operated by the electrician helper, who was in charge of the pre-cooling work. The employes covered by the Clerks' Agreement made a protest, and a joint check developed that the tractor was then in operation intermittently for a total of 4 hours and 50 minutes during the eight-hour spread of the assignment.

The evidence indicates that the number of cars pre-cooled diminished each year from a total of 5,814 cars during the 1934 season to 1,814 cars in the 1936 season.

The position involved is a seasonal one, beginning May 20, 1936, the year for which claim is made.

POSITION OF EMPLOYES: The employes cite the current agreement, effective August 1, 1933, and rely specifically on that portion of the scope rule which provides that the rules contained in the agreement shall govern the hours of service and working conditions of the classifications enumerated, among which are "tractor operators." They contend that the agreement requires that the work of operating tractors, used for handling these pre-cooling machines and their supplies about the station platform, be performed by employes covered by the agreement.

POSITION OF CARRIER: The carrier contends that the use of a tractor for moving the pre-cooling machines from point to point, as well as for hauling supplies of ice to the pre-cooling machines, is merely incidental to the work of pre-cooling; that the pre-cooling work is covered by provisions of the Shop Crafts' Agreement, and it was proper to permit the electrician helpers to make such use of the tractors as was necessarily incident to the pre-cooling work.

OPINION OF BOARD: The record in this case indicates that in 1934 the carrier assigned the tractor operation to an employe under the Clerks' Agreement; in 1935 the number of cars pre-cooled diminished to the extent that the services of a tractor operator could not be utilized during the entire period covered by the shift in question, and the electrician helpers were permitted to operate the tractor in connection with the pre-cooling work. At this time, the employes made protest and progressed it to the chief operating officer, but final handling was not completed until about the close of the season. The employes assert they received some assurance at that time that with the opening of the 1936 season consideration would be given to their claim for assignment of the tractor operation to employes under the Clerks' Agreement. The carrier, however, cites a letter of the chief operating officer, dated November 6, 1935, addressed to the general chairman, in which he says that he would consider the assignment of an employe under the Clerks' Agreement if it was found there were eight hours of continuous tractor operation. The employes do not claim there were eight hours continuous tractor operation on the shift in question in 1936.

Upon request of the Board, the parties made a joint check of the work of tractor operators on the first pre-cooling shift, and they certify that there are two tractor operator positions—one, assigned hours 1 A. M. to 9:30 A. M., and another 7 A. M. to 3:30 P. M.—that the operator on the first assignment hauls ice to pre-cooling machines for four and one-half hours of his assigned period, and for the balance of the time he is engaged in hauling baggage, mail, garbage cans, etc.; that the tractor operator on the second assignment hauls ice and pre-cooling machines four and one-half hours to five hours per day, and spends the balance of the time hauling mail and baggage.

It is the opinion of the Board that the contention of the carrier, that the tractor operations in connection with pre-cooling work come under the terms of the Clerks' Agreement only when there are eight continuous hours of such tractor operation on any one shift, is not well founded. The joint check indicates a current practice to the contrary. The work of operating the tractor in and around the passenger station of the carrier is covered by the Clerks' Agreement. It does not follow, however, that it was necessary for the carrier to establish a full-time position of tractor operator when the service of pre-cooling was commenced on May 20, 1936. The requirement would have been met had the work been assigned to tractor operators or other employes under the clerks' agreement. Under these circumstances, it becomes the duty of the parties to determine, by negotiation, the actual extent to which employes under the agreement have been deprived of the work of operating tractors in and around the passenger station; the just measure of loss resulting therefrom for which compensation should be made, and the parties to whom such compensation is due.

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 employes involved in this dispute are respectively carrier and employes 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 facts of record disclose a violation of the current agreement to the extent indicated in the above opinion.

AWARD

Claim sustained to the extent that it is herein found that the work of tractor operation in and around the passenger station of the carrier was being performed by employes not embraced within the scope of the Clerks' Agreement. The parties are directed to determine, by negotiation, the extent of the violation, the measure of loss resulting, the amount of compensation, and the parties to whom compensation should be paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 19th day of May, 1938.