

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad Company, that the Carrier violated the Clerks' Agreement:

1. When it required or permitted, and continued to require or permit, the contract drayman and his helpers (all employees of the Railway Express Agency), or other 'outsiders'—employees of trucking or transfer companies, who hold no seniority rights under the clerks' agreement with the Missouri Pacific Railroad Company, to come into the freight warehouse at Monroe, La., and perform clerical work, such as checking, receiving and delivering freight and the work of handling (trucking) freight into and out of the freight warehouse (beyond the tail gate of the vehicle), all of which clerical work and handling, (trucking) of freight beyond the tail gate of the vehicle is that covered by the scope and operation of the clerks' agreement, and was performed by employees classified, listed and rated pursuant to the agreement provisions for many years.

2. That the senior (unemployed), furloughed clerk qualified to perform the work of checking, receiving and delivery freight who is listed upon the class one clerks' Little Rock—Louisiana Division Stations and Yards seniority roster, be compensated for wage loss sustained, less amounts earned in other employment, if any, for each day, except Sunday and holidays, retroactive to April 5th, 1940, on which date this dispute was re-submitted to the division superintendent.

3. That the two (2) senior (unemployed), furloughed truckers listed upon the class three Little Rock—Louisiana Division Stations and Yards seniority roster be compensated at the rate of 41 cents per hour, eight hours per day, for wage loss sustained each day, except Sundays and holidays, less amounts earned in other employment, if any, retroactive to April 5th, 1940, on which date this dispute was re-submitted to the division superintendent.

NOTE: The individuals entitled to receive payment of claims in each instance to be determined by a joint check of the seniority roster and payrolls."

they submitted the names of any employes furloughed, or otherwise, of having sustained any wage loss resulting from the manner of handling freight received from or delivered to our freight house at Monroe, La. on April 5, 1940, or on any date subsequent thereto. This request of the Employes is certainly not properly before your Honorable Board. The claimants have not presented to the Carrier any tangible evidence upon which a monetary claim for any one could be based; neither have they listed in their statement of facts to your Honorable Board the names of the claimants nor any factual evidence of any losses they may have sustained.

"In item 3 the Employes list in their statement of claim:

"That the two (2) senior (unemployed) furloughed truckers listed upon the class three Little Rock-Louisiana Division Stations and Yards seniority roster be compensated at the rate of .41¢ per hour, eight hours per day, for wage loss sustained each day, except Sundays and holidays, less amounts earned in other employment, if any, retroactive to April 5, 1940, on which date this dispute was re-submitted to the division superintendent.

NOTE: The individuals entitled to receive payment of claims in each instance to be determined by a joint check of the seniority roster and payrolls.'

"This 'claim' is similar to that in paragraph 2. Here again the Employes name no claimant, nor have they ever presented to the Carrier, in any handling of this case on the property the name of any employes who they allege sustained any monetary loss resulting from the manner of handling freight received from or delivered to our freight house at Monroe, La. on April 5, 1940, or on any date subsequent thereto. Retribution claims of the employes, presented in paragraphs 2 and 3 of 'statement of claim,' must be supported by more evidence of a monetary loss having been sustained than that presented by the claimants to the Carrier to permit of your Honorable Board under the Railway Labor Act to make an award requiring the payment of monies. Section 3-(o) states that in case of an award by the Adjustment Board in favor of petitioner, the Board shall make an order directed to the Carrier to make the award effective, and, if the award includes the requirement for payment of money, to pay to the employe the sum to which he is entitled under the award. The petitioner is not seeking in his claim the payment of money to any known employe, but have asked that the senior furloughed clerk and two senior furloughed truckers be awarded payments of monies, but in neither case do they give the name of the clerk of the truckers, nor, as before stated, have they presented to the Carrier the names of any clerk or trucker for whom they seek retribution."

OPINION OF BOARD: Viewing the claim in its broad aspect there can be no question that the Carrier has violated the agreement. The checking, handling and trucking of freight into and out of the warehouse is clearly within the scope of the agreement as defined in Rule 1. The Carrier has no right to remove such work from under the agreement either by farming it out by contract or by permitting others not within the protection of the agreement to perform it. The Carrier must assign such work to employes who, under the terms of the agreement, are entitled to perform it. Awards 180, 331, 360, 385, 425, 485, 521, 637, 752, 753, 1122, 1209.

That patrons of the Carrier have, for many years, been permitted to check, handle and truck freight into and out of the warehouse, without objection from the Organization, does not estop the latter, under the facts and circumstances shown by the record, from now making claim for violation of the agreement. The dispute itself has extended over a period of several years. It became acute when the Carrier entered into its contract with Railway Express Agency for a pick-up and delivery service. Since that time complaints have been almost continuous. The Organization has in no sense slept upon its rights. In the argument it was not contended on

behalf of the Carrier that the work of checking and trucking freight inside the warehouse was not within the scope of the agreement. In the argument the Carrier sought to narrow the purview of the claim to a denial by the Organization of the right of any one, other than employees within the scope of the agreement, to go beyond the tail gate of a truck, delivering or picking up freight at the warehouse. While that is suggested in the claim we do not think it is material to the Organization's case. It may be conceded—as the Carrier argues—that to uphold such a contention would necessitate injecting an implication into the agreement which cannot be found in its express terms. To sustain the claim as the Carrier construes it would apparently bring the loading and unloading of trucks, picking up and delivering freight within the scope of the agreement. Of course such a construction of the agreement would broaden the scope rule which we have no authority to do.

It does not follow, however, that the Board may not, in a reasonable interpretation of the scope rule, settle the issue presented by this narrow view of the claim.

The broad issue presented in this phase of the claim is: where may the Railway Express Agency and other "outsiders" pick-up and deliver freight without infringing the rights of the Organization under the scope rule? To our minds there is only one practical answer to the question, i. e., upon the platform of the warehouse. In so holding we do not in any way broaden the scope rule nor do we go beyond the necessary implication of its express terms. Of course if there were no platform then pick-ups and deliveries could be made by "outsiders" on the floor, at the door, of the warehouse.

The Carrier is directed to make reparation to such persons having rights under the agreement as have been affected by the violation thereof subsequent to April 5th, 1940.

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 has violated the agreement.

AWARD

Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1941.