

Award No. 1771

Docket No. CL-1781

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the work of checking and carding cars on the Pueblo, Colorado, interchange tracks is clerical work subject to the scope and operations of the clerks' current agreement; that the actions of the Carrier in permitting or requiring car inspectors to perform such work violated the clerks' agreement and that the Carrier shall be required to restore such work to clerical employees holding seniority rights thereto, and further request that the senior furloughed clerks who have suffered loss of time since April 9, 1941, be compensated for time lost.

JOINT STATEMENT OF FACTS: Inspectors of the Joint Interchange and Inspection Bureau at Pueblo, Colorado, are required to make out and place destination cards on cars placed on interchange tracks from the A. T. & S. F. and C. & S. Railroads and during time such cars are on interchange tracks.

POSITION OF EMPLOYES: It is the contention of the Organization that the work of checking and carding cars on the Pueblo interchange tracks, or on any other tracks, is work clearly covered by Scope Rule of the Clerks' Agreement.

Prior to May 9, 1935, this work was performed by yard clerks at Pueblo Yard, which is approximately one mile from the interchange tracks. On May 9, 1935, instructions were issued by the Assistant General Manager, Mr. L. F. Wilson, that effective at once the joint car inspectors on the interchange would be required to card cars from waybills as to their destination, route, contents, block numbers, tonnage, spot numbers and etc., on cars of foreign empties and carloads received from the Santa Fe and C. & S.

The Organization first made written protest against this practice on August 21, 1935, requesting that the practice of allowing or permitting others than those covered by the Clerks' Agreement to perform such work be discontinued and that the senior cut-off employee in the Pueblo seniority district be compensated a day's pay for each day such work was performed by employees in other classes of service.

The employees contended at that time that the work in question was clearly covered by the scope of the Clerks' Agreement and employees covered by same were being unjustly treated when they were refused the opportunity

It is the contention of the Carrier that there is no provision of the Clerks' Agreement which vests in that class of employes the right to perform such work, as long as such work is within the jurisdiction of the Joint Interchange, and that placing cards on cars, sealing cars and the making of required car records is and has not only been recognized for many years as carmen's or car inspector's work, but in the instant case is performed by a Joint Interchange organization and clearly not within the Scope Rule of the Clerks' Agreement with the D. & R. G. W. As a matter of fact, a supply of cards has been kept on hand in the Joint Interchange Bureau office for the past 35 or more years. As above stated, the original agreement establishing the Bureau was signed in 1901, antedating by many years the first agreement made by the Clerks' Organization with the Carrier, and, as information, that agreement contains the following provision:

"Article 5

Inspection Division, Rules Governing

1. Each subscriber thereto pledges itself to card or otherwise distinctly mark all loaded cars with contents and final destination or consignee, also empty cars foreign to the receiving line. Inspectors will card loaded cars destined to the Colorado & Wyoming Railway at Minnequa which arrive from the south via the Denver & Rio Grande Western or the Colorado & Southern Railways."

which is evidence that the carding of cars by car inspectors is nothing new. Furthermore, so far as Western Lines are concerned, joint interchange bureaus are in existence at many terminals, and, while handling may differ in some respects depending on local conditions, the fact remains that car inspectors do card cars as a part of their recognized duties.

It is the Carrier's further contention that Awards 1458 and 1484, National Railroad Adjustment Board, Third Division, support its position in this case.

As to the employes' claim for time lost, it is the position of the Carrier that no monetary loss has been suffered by any clerk or clerks; no clerical employe was displaced because of car inspectors placing destination cards on cars placed on interchange tracks from A. T. & S. F. and C. & S. Railroads; and, without conceding that this practice should be discontinued, if it were stopped it would not result in the employment of an additional clerk, as the total time consumed by all four inspectors working on this particular interchange track amounts to only from 45 minutes to two hours per 24-hour day.

OPINION OF BOARD: Under the facts of record it is our opinion that the work here involved came within the scope of the clerks' agreement, and this the carrier recognized prior to May 9, 1935. It has been repeatedly held by this Board that work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms. The recorded facts disclose a violation of the repeated holding.

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 agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.