

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement in the Store Department at Kingsville, Texas, by requiring Laborers to count, weigh, measure and record material during the taking of annual inventory. Also

(b) Claim that the Laborers be paid at the Store Helper's rate for each day they performed the above work.

EMPLOYES' STATEMENT OF FACTS: On September 19, 1941, the Carrier began taking annual inventory at the Kingsville Store. Laborers were used to count, weigh, measure and record the material.

On all small materials the Laborers recorded their counts, weights or measurements on a card which they placed in the bin or box. On large materials they recorded the count, weight or measurement by writing it either on the material or its containers.

This work was performed by the Laborers working alone without any supervision or assistance.

With the exception of approximately ten days during annual inventory period, this class of work is performed by Store Helpers working with a Clerk.

POSITION OF EMPLOYES: The Employees quote the following rules from our current Agreement:

RULE 1.

EMPLOYES AFFECTED

"(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above named railroads and subsidiary companies now in existence or hereafter organized.

ment with the Clerks' Organization. It has been recognized that all employees in the service of the Carrier perform some clerical work in connection with their assigned duties. The counting, weighing and measuring of material is laborer's work, and the fact that he makes a record of his count, weight or measurement would not have the effect of reclassifying the laborer to that of a Helper.

The only reason advanced by the Organization to support its claim in the handling of this case with the Carrier is the mere statement that the work of counting, weighing and measuring material during inventory period is work which should be performed by Store Helpers. No rule as contained in the Agreement with the Clerks' Organization has been referred to by the representatives of the Organization in handling this case with the Carrier to base their contention that the service performed by the laborers heretofore referred to should be performed by Store Helpers.

The only rule to which reference has been made is No. 50, which provides that "employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such positions or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced." In order for that rule to have any application in the instant case, it must first be proven that the work performed by the laborers is work which should be performed by Store Helpers and there has been no evidence presented by the representatives of the Organization to support their contention that the work involved is that which comes under the classification of Store Helper's work. The fact that the work has been performed by laborers included in the Clerks' Agreement for a number of years is evidence of the fact that the work properly devolves upon that class of employees, as it is apparent that the Organization agreed that the use of laborers in the performance of the work was proper and not a violation of the Agreement, until, for some reason or other, they conceived the idea in 1941 that the work should be performed by Store Helpers.

It is the contention of the Carrier that the work performed by employees as indicated in the Carrier's statement of facts in the instant case is that pertaining to laborers and is work which laborers have been performing for many years and without any contention on the part of the Clerks' Organization, so far as the Carrier's records reveal, that such work should be performed by Store Helpers until that contention was made in connection with the work performed by laborers just prior to the taking of the inventory in 1941.

In view of the evidence herein submitted by the Carrier, your Honorable Board is respectfully petitioned to deny the claim of the employees.

OPINION OF BOARD: During a period of about ten days in September, 1941 the Carrier took its annual inventory at Kingsville, Texas, and during the taking of this inventory laborers were used, in some instances to count, weigh, measure and make notations as to materials on hand. It is contended here that this work performed by laborers was properly that of a store helper and that the work should be paid for at store helper's rate. It is said that store helpers perform all of this kind of work in the Store Department during the entire year with the exception of the ten day period when the annual inventory is taken. It is clear from certain bulletins issued by the Carrier that there is a distinction between the position of store helper and that of laborer, but the distinction is vague and not clearly defined.

It seems from the record that during this ten day annual inventory period it is necessary that materials on hand in and about the storehouse in bins, containers, stock piles, etc. must be counted, weighed and measured, and that some kind of a tag or mark must be placed on or in each bin, container or pile properly designating the quantity, weight or measurement

involved. The record is silent as to whether or not store helpers were used with the laborers in performing this work. The record is clear however that the laborers did nothing more than their usual work except to make some notation of their counts, weights and measurements. The record also shows that in the making of the inventory the laborers did not call off the materials for the purpose of recording, but that work was performed by store helpers calling off the notations to the stock clerk who made the permanent records in the stock book.

The referee is of the opinion that a common sense interpretation of the rules must classify this claim as unsubstantial. A laborer does not cease to be a laborer if he learns to count, weigh, or measure, nor if he is sometimes called upon to exercise one of these simple functions. It is obvious that any person of ordinary intelligence could do these simple acts and that there never was any intention to reclassify these men or change their status by using them for parts of ten days under a roof instead of out in the yard. Taking material from a bin and counting it back into the same bin would be considered by the average person to be a very ordinary form of common labor requiring no more intelligence than to count and write down what had been counted. It does not appear from this record that anything was required of these men on these days other than what might have been incidentally required of them on any day without hardship to themselves or violation of any agreement. Their work was no more burdensome nor difficult of performance on these days than on any other and it would be unreasonable to give them a different classification and rate of pay for these days. The claim must be denied.

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 claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1942.