Award No. 2686
Docket No. CL-2685

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 is violating the Clerks' Agreement at Austin, Texas, by requiring or permitting truck drivers, not covered by the Clerks' Agreement, to check and handle freight into and out of the freight warehouse. Also

(b) Claim that Warehouse Foreman Layton and Trucker Daniels be paid a "call" each day from December 23, 1942, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The history of this dispute goes back several years. The agreement violation has been corrected from time to time, but, after a while the violation occurs again.

On May 25, 1938, we filed claim with Superintendent Kelly (who is now General Manager). We directed his attention to transfer company employe going into the warehouse and cars at Austin and handling freight. Our letter is quoted below:

"Houston, Texas
May 25, 1938
File G 253

Mr. A. B. Kelly, Supt.
Missouri Pacific Lines
Palestine, Texas

Dear Sir:

Investigation develops that employes of the transfer company at Austin which provides our pick up and delivery service is also performing a great deal of work that is covered by our agreement and should be performed by employes working under our agreement.

We find that we usually have one Dallas, one Taylor, one Houston, one San Antonio, and one Palestine merchandise car for Austin. These cars are placed each morning and our warehouse force, which consists of the Foreman and one trucker in the morning, go into the cars,

abolished nor any reduction made in the station or warehouse force at Austin as a result of the trucking service; as a matter of fact, as evidenced by the tabulated positions in the Carrier's Statement of Facts, the number of positions has actually been increased by one position since the trucking operation was placed in effect;

(2) The operation in question is not in violation of Agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks and, consequently, the claim set forth in the Employes' ex parte Statement of Claim is not supported by any rule in that agreement;

(3) The Employes, in submitting the proposed Memorandum of Agreement attached as Carrier's Exhibit No. 1, recognized that the work in question being performed by the employe of the trucking company does not come under the Agreement between the Carrier and the Clerks' Organization, and, furthermore, notwithstanding the fact that the same conditions existed at Austin at that time as now, they withdrew their request for an agreement at Austin, as well as several other points, and accepted in lieu thereof an agreement covering the handling at only Houston, San Antonio and Corpus Christi;

it is clearly evident that the contention of the Employes that the Carrier is violating the Clerks' Agreement at Austin should be dismissed, and the "claim that Warehouse Foreman Layton and Trucker Daniels be paid a 'call' each day from December 23, 1942, until the violation is corrected," accordingly denied.

OPINION OF BOARD: The record shows that on or about December 23, 1942, motor trucks of the Missouri Pacific Freight Transport Company arrived and departed from the Austin, Texas freight warehouse at or after 11:30 P. M. after all regular employes at the warehouse had completed their tour of duty and gone home. Thereafter the truck driver unloaded his own freight from the truck to the warehouse and loaded other freight from the warehouse into his truck. The Clerks' Organization contends that this includes work covered by the current agreement and, when performed by the truck driver, constituted a violation of the agreement.

An examination of the record reveals that the checking of freight in and from the warehouse was, prior to December 23, 1942, performed by clerks. Also, the moving of freight from the tail gate of the truck to the warehouse and from the warehouse to the tail gate of the truck was, prior to said date, work performed by clerks. We are of the opinion that it is work which belongs to the clerks under the current agreement and that the carrier cannot properly deprive them of the work by permitting the truck driver, a non-employe of the carrier, to do it. This very question seems to have been decided in Awards 1647 and 1649 wherein it was determined that the checking, handling and trucking of freight into and out of the warehouse is clearly within the scope of the agreement and that third parties may pick up or deliver freight only upon the platforms of the warehouse without infringing the rights of clerks under their agreement. See also Awards 2006 and 2387.

This conclusion is further supported by the construction the parties themselves gave to the agreement with reference to this type of work. Many complaints were lodged with the Carrier prior to the time the present claim originated in which the clerks asserted their right to this work. The Carrier recognized the correctness of their claims and took measures to prevent the recurrence of the practices complained of. Several claims were paid based on violations identical with the one before us. While these adjustments on the part of the carrier are not absolutely controlling, they afford strong evidence of the construction we should place upon it. There is no better method of construing indefinite provisions of an agreement than by following the construction which the parties themselves have placed upon it.

The record clearly demonstrates that the clerks have been deprived of work to which they were entitled as alleged in the claim.

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 carrier violated the current agreement as contended by the claimant.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1944.

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