Award No. 3651
Docket No. CL-3556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY; THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY; THE BEAUMONT, SOUR LAKE AND WESTERN RAILWAY COMPANY; SAN ANTONIO, UVALDE AND GULF RAILROAD COMPANY; THE ORANGE AND NORTHWESTERN RAILROAD COMPANY; IBERIA, ST. MARY AND EASTERN RAILROAD COMPANY; SAN BENITO AND RIO GRANDE VALLEY RAILWAY COMPANY; NEW IBERIA AND NORTHERN RAILROAD COMPANY; SAN ANTONIO SOUTHERN RAILWAY COMPANY; HOUSTON AND BRAZOS VALLEY RAILWAY COMPANY; HOUSTON NORTH SHORE RAILWAY COMPANY; ASHERTON AND GULF RAILWAY COMPANY; RIO GRANDE CITY RAILWAY COMPANY; ASPHALT BELT RAILWAY COMPANY; SUGARLAND RAILWAY COMPANY; NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement at Palestine, Texas, on July 12, 1945, when it used mechanical employes to unload L. C. L. freight from a merchandise car. Also

(b) Claim that Transfer Clerk Stanaland and Truckers Wagner, Payne, Brown and Smith each be paid a "call" because of the agreement violation.

EMPLOYES' STATEMENT OF FACTS: On July 12, 1945, during the time Transfer Clerk Stanaland and his truckers were on duty, Mr. Broughton and his labor gang from the mechanical department unloaded freight from a merchandise car which was waiting to be spotted at the freight house.

The transfer clerk and the truckers were on duty and available to perform the work in question.

POSITION OF EMPLOYES: The issue presented to this Board is the action of the Carrier in having work covered by the Clerks' Agreement performed by persons who are not covered by that agreement.

The "Call" rule (43) in the Clerks' Agreement here involved is clear and explicit. There is nothing in that rule which requires the payment of a "call", under the circumstances existing in this case, where the claimants performed no service and would not have performed any service "not continuous with, before or after the regular work period."

In the light of the foregoing record it is the position of the Carrier that the contention of the Employes should be dismissed and the accompanying claim accordingly declined.

OPINION OF BOARD: At about 8:30 A.M. July 12, 1945, a labor gang foreman and two (2) mechanical department laborers unloaded some material belonging to the Carrier from an LCL car recently arrived from San Antonio, Texas, and standing on the "old scale track" about 1110 feet from the Palestine, Texas, freight depot. The job, according to the Carrier, took about 10 minutes.

The Organization claims violation of Rule 1 of its current Agreement with the Carrier, and of the Memorandum Agreement of 1940, effective at the time of the alleged violation. Transfer Clerk Stanaland and Truckers Wagner, Payne, Brown and Smith—all on duty at the freight depot at the time of the alleged violation—each should be paid a "call" (Rule 43) as a result of the violation, the Organization contends.

The Memorandum Agreement, read in connection with Rule 1 and the many interpretations of the Clerks' "Scope Rule" handed down from this Board, is so clear that we need not labor toward an inevitable finding that the Carrier violated the Agreement in this case.

> "(a) It is recognized and agreed that all of the work referred to in Rule 1 of the Agreement . . . belongs to and will be assigned to employes holding seniority rights and working under the Clerks' Agreement . . ."

The Carrier's only meritorious argument to the contrary, in this case, was that employes other than Clerks frequently unloaded company material at points away from stations or depots. The Organization responded that the Clerks did not ordinarily object to such activity out on the line, but held firmly to their jurisdiction "in and around stations" (Rule 1-c). We agree that the old scale track where the car in question was partially unloaded falls within that definition of jurisdiction.

Having found a violation of the Agreement, we proceed to the proper remedy or restitution.

Nowhere in the record is there any substantial evidence of how much work the claimants were deprived of as a result of the violation, or, indeed, whether each of the claimants was actually deprived of work.

The only testimony along this line came from the Carrier: that a foreman and two mechanical department laborers unloaded the material in about 10 minutes.

Yet the Organization asks for a "call", three (3) hours' pay covering two (2) hours' work, for each of the 5 men on duty at the station while the material was unloaded.

The Board views the second claim as an effort on the part of the Organization to penalize the Carrier for a breach of the Agreement, i.e., to levy a fine on the Carrier. There is nothing in the Railway Labor Act to give this Board any such authority. Nor is there any provision in the Agreement calling for any fines or penalties in case of violations. "The penalty rate for work lost because it was given to one not entitled to it under the agreement is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. Awards 3193, 3271." Award 3277 cited in Award 3371.)

Because of the lack of evidence as to how much time and how many men would have been required to unload the material, had the work been as-

signed in accordance with the Agreement, the Board remands the second claim to the parties for adjustment. Failing to agree, they may return to this Board with the evidence necessary to make an equitable award in line with this Opinion.

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 Agreement to the extent indicated in the Opinion.

AWARD

Claim (a) sustained; claim (b) remanded to the parties for adjustment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.