

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(a) The Carrier is violating the Clerks' Agreement at Condon, Oregon, by requiring or permitting Contract Draymen, not covered by the Clerks' Agreement, to check and handle freight into and out of the freight warehouse, also

(b) Claim that Clerk Orvinne Tierney, located at Condon, Oregon, be paid a minimum "call" for May 14, July 2, 27, and 28, August 7, 9, 13, 24, and 30, September 5 and 10, 1944, and on each subsequent day that the contract drayman is permitted to perform the work, until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 1, 1943, the Union Pacific Railroad Company maintained daily mixed freight and passenger service between Arlington, Oregon and Condon, Oregon. Less than carload freight destined to Condon was hauled to Condon on the mixed train, arriving at that point in the morning, and Union Pacific Freight Warehouse employees checked, unloaded, and piled the freight in the warehouse. On or about January 1st, 1943, the Union Pacific Railroad Company, for reasons best known to it, substituted truck service on a tract basis for the service previously rendered by the mixed trains between Arlington, Oregon, a point on the main line of the railroad, and Condon, Oregon, located on a line known as the Condon Branch, approximately 45 miles from Arlington. Freight arrives at Arlington via rail, freight cars are set out at that point and Union Pacific warehouse employees check and deliver freight destined to Condon, Kinzua and points beyond to the contract drayman who receipts for the freight delivered to him. Contract drayman then proceeds by truck to Condon, arriving at that point in early hours of the morning, unlocks the freight warehouse with a key furnished to him by the Union Pacific, unloads the freight from his truck into the warehouse, checks it to be sure he has delivered the proper freight, notes damage if any, and then separates the freight into three piles to-wit: Condon proper, Kinza, Oregon, and points beyond Condon served by the Blue Mountain Stage Lines. It should here be stated that the contract between the UPRR and Flatts' Truck Lines (the contract drayman) provides that Flatt will be responsible for any loss or damage to freight after it is delivered into his hands by the Union Pacific freight warehouse employees at Arlington, Oregon. After unloading the freight at Condon, the

OPINION OF BOARD: On or about January 1, 1943, Carrier inaugurated a truck service between Arlington, Oregon and Condon, Oregon. Freight arrives at Arlington by rail where Carrier employes check and deliver less than carload freight to the truckman which freight is destined for Condon and points beyond. The driver of the truck is furnished with a key to the Condon freight house which is equipped with a switch lock and when he arrives with shipments to be unloaded at Condon he delivers the same inside the door of the freight house and picks up LCL freight destined for Arlington and points beyond. There is controversy between the parties with respect to what service beyond the actual physical loading and unloading of the truck is performed by the truck driver at Condon.

Much controversy has been had between Carriers and the Brotherhood of Railway and Steamship Clerks with respect to Scope Rule violations in connection with the performance of transfer LCL freight by outside trucking companies and many Awards of this Board have been written on the subject. One of the leading Awards is 1647 which involved a situation somewhat similar to the one here involved. In that Award the Board stated:

"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."

There is no platform at the Condon warehouse. It is not a violation of the Clerks' Agreement for the Carrier to furnish the trucking company with a key to the freight house. Accordingly, within the rule as announced by the Board in that case, which we consider applicable in this instance, there is no doubt that the manual work of loading and unloading by the truck driver is not a violation of the Scope Rule of the Clerks' Agreement. Thus, we are presented with the problem of determining what the truck driver does in addition to the manual work involved in the loading and unloading and whether or not such additional acts involve the performance of work which is within the Scope Rule of the Agreement.

As to that phase of the factual situation, we find that the Employees assert:

"Contract drayman then proceeds by trucks to Condon, arriving at that point in early hours of the morning, unlock the freight warehouse with a key furnished to him by the Union Pacific, unloads the freight from his truck into the warehouse, checks it to be sure he has delivered the proper freight, notes damage if any, and then separates the freight into three piles to-wit: Condon proper, Kinzua, Oregon, and points beyond Condon served by the Blue Mountain Stage Lines."

and we find further an affidavit dated March 3, 1948 from one Carl E. Pierson who during the year 1944 was driving for Vernon Flatt's, the contract hauler, the pertinent part of which reads as follows:

"I was usually driving at night and I was furnished a key to the Union Pacific Freight house and was instructed by Vernon Flatt, my employer to haul such freight as was available at Arlington during the night and place it in the Freight House at Condon and to segregate it between bills and check it to see that all freight that I signed for in Arlington was delivered in Condon as

it was on the contract that Vernon Flatt was responsible for shortage or damage occurring en route between these two stations, during the year 1944 I made several trips at hours that no one was on duty in Condon, unloading the freight I hauled into the Union Pacific Freight house, checking and piling the freight hauled in line with my instructions." (Emphasis supplied.)

On the other hand we find a statement from the contract hauler submitted by the Carrier reading as follows:

"In regards to the matter of handling freight and express at Condon, Ore. Wish to state that I have never instructed any of my drivers while unloading truck at Condon to segregate freight into three separate piles in freight house. If any of my drivers done so it was on instructions from Agent's force.

In matter of drivers checking freight or express on to truck at either Arlington or Condon he is instructed to do so for my protection only as we are held responsible for all merchandise that we handle between Condon and Arlington, Ore."

We find further a statement by Carrier to the following effect:

"With reference to the statement that the driver would 'segregate it (the LCL freight) between bills', the former agent at Condon has advised the Carrier that he did recall that the truck drivers were having considerable difficulty in checking their freight so as to know that they had unloaded all that should be unloaded and that any separation, segregation or piling of shipments for different points was the truck driver's own method of attempting to make certain that he had delivered all LCL freight called for. Such methods are recognized as the only way the truck owners could check to know that all of the articles called for by the billing were in fact unloaded."

Now then, we do not believe that it would be a violation of the Scope Rule of the Agreement for the truck driver to count the pieces of freight destined for Condon and to make an inspection with respect to damage which might have been sustained en route from Arlington to Condon and make notations thereof for the contract hauler's record. However, despite the conflict in the record, it is clear that the work he performed went beyond that and to that extent invaded the coverage of the Scope Rule of the Agreement.

As the record reveals, his claim first arose over five years ago. There was considerable delay on the property in the handling thereof. Before initiating the claim, Employees waited a period of eighteen months after receipt of notice of declination thereof by Carrier's highest officer. We believe that the Employees' action in delaying the bringing of the claim after declination might easily have conveyed the impression to the Carrier that they were willing to accept such decision and thus lead Carrier to believe that no action was necessary to prevent an accumulation of liability. This, of course, would not and should not be sufficient to bar the claim. However, in this instance we deem it sufficient to confine the commencement of payment under the award of compensation to the date of the claim, to-wit: June 16, 1948.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of July, 1949.