Award No. 4572
Docket No. CL-4583

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: The Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement.

1. When it required Andrew M. Gass to perform certain services for the Western Fruit Express Company.

2. That Clerk Andrew M. Gass, commencing December 4, 1947 and all subsequent dates be paid a minimum day at Heater Service Inspector's rate in addition to his regular clerical rate for each and every day that the Carrier required him to perform this additional work.

JOINT STATEMENT OF FACTS: Andrew M. Gass entered the service of the Great Northern Railway Company as a clerk on April 12, 1918 and has been employed in that capacity since that date. During December, 1947, January and February, 1948 he was employed as a clerk at the Great Northern Railway's Station at Cambridge, Minnesota, and during this period of time, in addition to his regular clerical duties, has serviced heaters in refrigerator cars that were loaded with perishables at that point. This service was performed by Clerk Gass during his regular assigned hours and for said service was paid fifty cents per car plus his regular clerical rate.

The Western Fruit Express Company is a wholly owned subsidiary service corporation of the Great Northern Railway Company, classified as a "car line." This subsidiary company furnishes, upon demand, refrigerator cars for the use of the railway company and services these cars at all points on the lines of the railway company where employes of the Western Fruit Express Company are maintained. Where no employes of the Western Fruit Express Company are located such refrigerator cars have been serviced and still are so serviced by employes of the railway company of various classifications.

Previous to 1923 a material number of employes covered by the scope of the Agreement with the Brotherhood of Railway and Steamship Clerks had been engaged in the servicing of these refrigerator cars at points where such servicing was being taken over by the Western Fruit Express Company, and for the purpose of avoiding complications on this account agreement was entered into between the Brotherhood and the railway company on August 27, 1923 (Copy attached designated as Joint Exhibit A).

Subsequent thereto the various classes of employes heretofore mentioned continued to perform the work of servicing such refrigerators at points where Western Express employes were not located.

advised Mr. Emme under date of September 30, 1947 of our willingness to make such allowance. However, under date of October 14, 1947 Mr. Emme advised us that they considered that the agreement of August 27, 1923 excluded all such work from the scope of their agreement and gave to the Western Fruit Express employes the exclusive right to perform such work, with which, of course, the Carrier does not agree, since it is clearly provided in the agreement referred to and as heretofore pointed out, that the only exclusion from the Scope of the Clerks' Agreement of the right to perform such service was at points where, "If work is being performed by employes of the Western Fruit Express Company."

Your Board has held on numerous occasions that if there be ambiguity in the wording of an agreement the intent of the parties making such agreement may be evidenced by long existing practice without dispute. Therefore, should your Board feel that there is any ambiguity in the wording of the agreement of August 27, 1923, the Carrier holds that the best evidence of the fact that the intent of such agreement was to provide only for the cessation of the performance of the service in controversy by members of the Clerks' Organization at such points as where it was performed by employes of the Western Fruit Express Company is the fact that from August 27, 1923 to June 21, 1947, a period of nearly twenty-four years, it continued to be performed without protest and without request for any additional compensation therefor by numerous employes covered by the Scope of the Agreement with the Brotherhood of Railway and Steamship Clerks.

The Carrier, therefore, holds that your Board cannot do other than deny the claim of the Employes in this case based upon the following incontrovertible facts:

First: Prior to the agreement of August 27, 1923 the work of servicing refrigerator cars had been covered by the Scope of the Agreement with the Brotherhood of Railway and Steamship Clerks.

Second: Under the agreement of August 27, 1923 it was agreed "to exclude these positions from the Scope of the Clerks' Agreement dated March 1, 1920 and as may be hereafter revised or amended **while such work is being performed by employes of the Western Fruit Express Company on and after September 1, 1923.**" (Emphasis Ours)

Third: Nowhere in the agreement of August 27, 1923 is there any provision nor even any inference of an agreement to exclude the performance of this work from the Scope of the Clerks' Agreement other than while the work is being performed by employes of the Western Fruit Express Company.

Fourth: For approximately twenty-four years subsequent to the agreement of August 27, 1923 the servicing of these refrigerator cars continued to be performed by employes coming within the scope of the Clerks' Agreement without protest and without request for any added compensation for such services.

Fifth: This work of servicing refrigerators is not now and never has been performed at Cambridge by employes of the Western Fruit Express Company.

(Exhibit not reproduced.)

OPINION OF BOARD: The facts are not in dispute having been incorporated in a joint submission and need not be restated here.

The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employe covered by the agreement. The scope rule simply specifies the employes covered by the agreement and establishes the various types of work to which the covered employes are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employes.

Generally it is the suspension from an employe's regularly assigned duties, for the purpose of performing other duties, which gives rise to valid claims for compensation for the performance of other duties. See Awards Nos. 3417, 3418, 4352 and 4539. No such suspension is alleged or shown here.

Since it has not been shown that the Carrier violated any rule of the agreement the claim is without foundation and 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 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

The Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 29th day of September, 1949.