

Award No. 4994

Docket No. CL-4939

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
R.R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF R.R. CO.; THE ORANGE &
NORTHWESTERN R.R. CO.; IBERIA, ST. MARY & EASTERN
R.R. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA &
NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.
(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 Bay City, Texas, by requiring or permitting truck drivers to check and handle freight into and out of the freight warehouse. Also

(b) Claim that the Cashier be paid a call under Rule 43 in each instance such violation occurs subsequent to June 6, 1947.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of May 1947 it was brought to our attention that over-the-road truck drivers were checking and handling freight into and out of our freight warehouse at Bay City, Texas, when no clerical employe was on duty.

On May 31, 1947, we informed the Carrier that the Agreement was being violated and that the Cashier was being instructed to claim a call each time the violation occurred.

Numerous identical claims have been filed on this property and Carrier has agreed that the Agreement was being violated, allowed the claim and discontinued the violation. In the instant case the Carrier refuses to make the same disposition as have been made in numerous identical cases.

POSITION OF EMPLOYEES: The basic issue in the instant case is the integrity of the Agreement, and respect for longstanding interpretations and application of the scope rule of the Agreement.

Rule 1 is the scope rule and spells out the employes and work that is covered by the Agreement. The rule reads:

[1007]

thereto, we are of the clear opinion that the situation existing on the Carrier's property, illustrated by this claim, is one calling for negotiation and agreement, and that this Board does not possess the power to make a change in the existing agreement, such as sustaining the Claim would involve. We therefore hold that there has been no violation of the Agreement, and the claim is denied.'"

In addition to the above quoted excerpts from Third Division Awards, the Adjustment Board has in several other Awards (First Division) recognized the principle emphasized in the above Third Division Awards with respect to a practice prevailing long periods of time going unchallenged by the Employees viz:

No. 5476 8169 9033 10411 11287 12005 12116

A fair and unbiased analysis of the foregoing record can lead only to the following conclusions:

1. The truck driver does not "check" freight unloaded from or loaded into his truck on arrival Bay City at 1:30 A.M.
2. There is no necessity for this truck driver to "check" freight unloaded from or loaded into his truck at Bay City.
3. There is no necessity for, and no good purpose would be served by, the Cashier being given a standing "call" so as to be on hand to watch the truck driver unload and load freight on arrival Bay City at 1:30 A.M.
4. The payment of a "call" to the cashier each night—a minimum of two hours at the time and one-half rate of his position—would be nothing more nor less than a wasteful application of the Carrier's revenues, which neither your Board nor this Carrier may properly condone.
5. The position taken by the Employees is entirely without justification, merit, or basis in fact; and, under the circumstances, is to say the least, rather enigmatic.

In light of the above it is the position of the Carrier that the contention of the Employees should be dismissed, and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: It is shown by the record that motor trucks of the Missouri Pacific Transport Company arrived and departed from Bay City, Texas, at 1:30 A.M. No employees under the Clerks' Agreement are working at this hour. The Carrier permitted the truck drivers to handle freight into and out of the freight warehouse. The Clerks' Organization contends that this is work belonging to clerks and that the handling by truck drivers constitutes a violation of the Agreement. Claimant, the cashier, demands that he be paid a call for each time the violation occurred.

The movement of freight from trucks into the freight warehouse and from the warehouse into trucks is work belonging to clerks. Awards 2686, 4934. Many claims have been made to the Carrier concerning the handling of freight into and out of freight warehouses by truckers and Carrier has recognized them as violations by paying the same. We say, as we said in Award 2686, that there is no better method of construing indefinite and uncertain provisions of an agreement than by following the construction which the parties themselves have placed upon it. Clearly the handling and checking of freight into a freight warehouse and from the freight warehouse to trucks is clerks' work on this property. This is supported by the conduct

of the parties in their interpretation of the Agreement over a long period of years. An affirmative award is required.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.