

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**

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated and continues to violate the Clerks' Agreement when it established a second recheck or reaudit bureau in the Office of the Auditor of Freight Receipts, 63rd Street, Chicago, Illinois, in violation of the Scope and Seniority rules.
2. Four additional positions be bulletined at highest rate in the Reverification Bureau to take over the duties now being handled by this outside bureau.
3. All losses sustained by employees involved in or affected by the Carrier's violation be paid, retroactive to October 1, 1948.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 21, 1938, all reverification work was done by the Comptroller's Reverification Bureau (also called Comptroller's Verification Bureau) and was not covered by our agreement. This Bureau consisted of 45 positions.

Negotiations to bring them under our agreement were completed on that date and effective January 1, 1939, this Bureau was brought under the provisions of our schedule.

Coincidental with the signing of the agreement mentioned above, the Carrier abolished the second recheck, part of the work of the Bureau and 35 positions were abolished, reducing the Bureau to ten (10) positions and said ten positions were all that were brought under our agreement.

On October 1, 1948, the Carrier entered into a contract with the Railway Interline Audit System to perform a second recheck of all interline settlements in the Office of the Auditor of Freight Receipts. Four men were brought in on that date to establish this recheck bureau, one more position added later and at present the number is reduced to three.

POSITION OF EMPLOYEES: There is an agreement between the parties bearing effective date June 23, 1922 and revised September 1, 1927, which contains the following rules:

- Rule 1—Scope
- Rule 2—Definition

In forming Opinion of Board of Third Division Award 4027, the Board, assisted by Referee James M. Douglas, stated:

"The Clerks performed their usual work without diminution. No work which they regularly, daily performed was taken from them. The work in question became no part of the usual permanent records compiled and kept by the Clerks. The work in question was work of a special nature used for exploring the accuracy of the very work the Clerks themselves were regularly performing.

Since we are of the opinion that such Special Duty Work, under the circumstances of this case and the conditions here existing, is not such customary work regularly performed by Clerks as contemplated by the scope rule, we must deny the claim."

In summation Carrier asserts that the independent contract deprived none of the employes of work to which they are entitled, but it merely carried out sound and well recognized business practices.

(Exhibits not reproduced.)

OPINION OF BOARD: There is considerable conflict between the parties with respect to the facts in this docket. This much, however, is not in conflict: On September 8, 1948 the Carrier entered into a contract with the Railway Interline Audit System under which the contractor was to audit Carrier's interline freight account settlements and was to be paid a percentage of recoveries by the Carrier for undercharges uncovered. The contractor commenced work on such settlements after they had been checked by Carrier's employes in the office of the Auditor of Freight Receipts Office and then re-checked in the Carrier's Reverification Bureau.

The Employes state that this third check was at one time performed by employes in Carrier Reverification Bureau at a time when they were excepted employes and before they were brought under the Agreement and such work should, therefore, be considered as covered when Carrier decided to re-establish the third check. In addition, the Employes assert that the clerks in Carrier's employ were instructed to pass certain items which therefore had been checked and re-checked by them and that work was done, in the first instance, by the Railway Interline Audit System. The employes submit some evidence which they allege support these assertions. Carrier denies these assertions of the Employes and submits evidence which it alleges supports these denials. As to these matters the Employes have the burden of proof and as the facts of record appear we cannot say that they have met that burden. Accordingly, the claim will be considered on the basis of the facts as stated in the first paragraph of this Opinion.

In Award 1802 this Board with Referee Sidney St. F. Thaxter was confronted with a problem similar to that presented herein. There, however, the Carrier did not set up as elaborate a procedure for a check and re-check of interline settlements by its own employes as did the Carrier in this case. The Board in that Award said:

"The checking and rechecking ordinarily done by the clerical force of the carrier had been completed in this instance. There was no more work which they could do. There is nothing in the agreement which bars the railroad from contracting for an outside audit and such audit after the work ordinarily performed by the regular employes is completed is not an infringement of their duties, even though it does of necessity involve the performance of clerical work."

We subscribe to the reasoning of that award as set forth in the above quoted language and consider it applicable here. Accordingly, we find that a denial award is indicated.

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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 20th day of April, 1951.