

Award No. 5774
Docket No. CL-5665

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Angus Munro, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

Rules 1 and 3 were violated when work covering perishable freight inspection at Salt Lake City Freight Station was removed from the scope and operation of the Clerks' Agreement and turned over to employees of the Western Weighing and Inspection Bureau effective February 1, 1948.

The employe occupying position of Utility Clerk or the employe occupying the position of Tracer Clerk, the duties of which positions included perishable freight inspection work prior to February 1, 1948, shall be paid one hour's pay at time and one-half rate for each car of perishable freight inspected by Western Weighing and Inspection Bureau employes subsequent to January 31, 1948.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 1, 1948 all work involving the inspection of perishable carload freight at Salt Lake City was assigned to and performed by employes occupying positions handling freight claim work at Salt Lake City Freight Station. Effective February 1, 1948 the Carrier removed this work from the scope and operation of the Clerks' Agreement and placed such work under the jurisdiction of the Western Weighing and Inspection Bureau, whereby employes of the Bureau have handled all work in connection with carload perishable inspection subsequent to January 31, 1948.

POSITION OF EMPLOYEES: Throughout the period of years that an agreement between the Organization and the Carrier has been in force and prior to the effective date (February 1, 1922) of the first agreement between the parties, all work involving the inspection of perishable freight, making reports in connection with such inspections and keeping records thereof, has been assigned to and performed by employes of the Carrier at Salt Lake City Freight Station occupying positions coming under the scope and operation of the agreement between The Denver and Rio Grande Western Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

This work was regularly performed by the employes until February 1, 1948 when the Carrier transferred all of its perishable freight inspection work

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner, for and on behalf of certain employes more particularly referred to in Statement of Claim, hereinafter called Claimants. The claim is against the D. & R. G. W. Railroad hereinafter called Carrier. The subject matter of said claim involves inspection of perishables only. In turn said subject matter is divided into two (2) classes, to-wit: (1) that work which came into being as a result of Carrier's efforts and, (2) that work which came into being under and by virtue of a contract by and between Carrier and Western Pacific.

Petitioner averred Carrier violated Schedule Rules 1 and 3 by removing said above mentioned and described work from assignments given to Claimants. In particular Petitioner averred the last above mentioned class of work legally belonged to Claimant. We think the point thereby raised is: does the Schedule give to Petitioner a right to compel Carrier to maintain work it has acquired by contract? We do not think so in that the consideration supporting the Schedule only goes so far as to cover work which Carrier has to offer, certainly that which came to Carrier from a third party may be discontinued by said party.

With reference to the first above mentioned class of work the point is: does Carrier's act constitute a farm out? In Award 2338 we find the general rule stated as follows: "A Carrier may not let to others the performance of work of a type embraced within one of its collective agreements with its employes." However there are exceptions to the rule, see Award 5304. Has Carrier met the burden of going forward and established that it falls within the exceptions? We think after examination of the exhibits and the matter of public relations subsequent to the date in question it is amply demonstrated the work requires that type of skill Carrier itself cannot otherwise provide.

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 facts of record do not justify a sustaining Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.