

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY (Eastern District)

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

- (1) Carrier is in violation of Rule 1 of our current agreement when in March or April 1949 they changed method of checking freight received from Sears, Roebuck and Montgomery Ward at Kansas City Freight Station,
- (2) Carrier should now compensate senior furloughed employee entitled to recall, effective retroactive until April 25, 1949 and until such time as the checking of this freight is returned to Clerks covered by agreement dated April 1, 1945. Stated another way, until such time as Carrier reverts back to the practice in effect in March 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 18, 1948 the LCL freight from Sears, Roebuck and Montgomery Ward was handled by a contract drayman who had an employee at the loading platforms of these companies for the purpose of checking and receipting for the merchandise loaded into the drayman's trucks. These trucks were then driven to the docks of the Union Pacific Freighthouse and upon arrival were unloaded and the merchandise rechecked by Union Pacific RR Check Clerks and then loaded into freight cars.

On October 18, 1948 the Motor Rentals Express Company was granted the contract for picking up and delivering LCL freight and they continued to handle this business in the same manner, that is, they placed an employee at the Sears, Roebuck and Montgomery Ward docks for the purpose of checking and receipting for merchandise. The freight was then delivered to the Union Pacific RR Freighthouse docks and was again checked by Union Pacific RR Check Clerks prior to loading into freight cars.

In March or April 1949 the Carrier eliminated the check made by the Union Pacific RR Check Clerk at the Union Pacific RR freight dock and accepted the check made by the Motor Rentals Express Company employees at the Sears, Roebuck and Montgomery Ward freight docks.

importance to the Employees as well as to the Carrier to retain business. Instead, the Employees by protesting claims of this type are apparently not interested in maintaining the revenue from which they derive their pay checks. It was this type of claim that was referred to in Award 2012 where it is stated:

"It is the understanding of the referee, and probably of the general public, that these agreements are made for the purpose of promoting harmony in the relationships between labor and management in the railroad industry, and that neither party to the agreements intends nor expects that they shall be so construed and applied as to promote discord, inefficiency, or a wasteful application of the revenues of the railroad in its efficient operation for the benefit of the public as well as for the benefit of labor and management. Certainly the public, the employees, and the management all realize the importance of fair and just treatment of labor by management; and this is exemplified by the Act of Congress from which we derive our powers.

Management cannot run a railroad without labor; and labor cannot run a railroad without management. Neither of them, nor both together, could run a railroad without capital; and we as an adjustment board, could not exist except by a power given through Congress which represents the public, which is not only disinterested as to small disagreements, but is highly impatient with them. Our duty to the public, the management, and labor, is fairly to examine these agreements from one end to the other, modifying each sentence and paragraph by the provisions of each and every other sentence and paragraph, so that the whole instrument may be applied with reasonableness, without discrimination and in the interests of harmony." (Underscoring added.)

CONCLUSION

The Carrier in this submission has shown that the claim presented by the Employees is wholly without merit. The Carrier eliminated entirely a work detail for the purpose of retaining LCL business originating at Sears, Roebuck and Montgomery Ward. This elimination resulted in no reduction in force.

In addition to the above, the Carrier has shown that based on previous decisions of this Board, there can be no basis for sustaining this claim.

The Carrier respectfully requests that the claim of the Employees be denied.

All facts presented in this submission have been made or are known to the representatives of the Clerks' Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 14, 1949 the Carrier involved in this case made certain changes in its method of checking LCL freight shipments received from Sears Roebuck & Co. and Montgomery Ward and Company at the Kansas City Freight Terminal. Prior to this date when the contract hauler arrived at the Carrier's freight platform with such shipments which had been picked up at Sears, Roebuck and Company and Montgomery Ward and Company a careful and detail check was made of the shipments by Carrier's freight house employees. These Companies protested the slow movement of their freight out of the Kansas City Terminal. Consequently Carrier made a careful study of the situation and decided that the service could be materially speeded up by eliminating this check by the freight house employees when the contract haulers arrived at the Carrier's freight

platform. Therefore on April 14, 1949 the indicated change was made. According to the record no other changes were made in the shipping procedure.

The Petitioner protests this action by the Carrier as being in violation of the Scope Rule of the relevant agreement. It is claimed that the Carrier now accepts the check made on such shipments by the employees of the contract hauler, thus removing work from the agreement with the Clerks' Organization, and thereby arranging for its performance by employees who have no seniority rights under the Clerks' agreement.

In the record there is much argument with respect to whether the Carrier eliminated the checking operation in question, or whether that function was merely transferred to employees of the trucking firm who hold no seniority rights under the agreement. Despite the extensive argument on this point it seems clear from the record that the operation in question was eliminated and was not transferred. It appears that employees of the trucking firm make the same checks at the loading docks of Sears Roebuck and Montgomery Ward which they have always made—that these are made at the direction of the trucking firm and for its own use and protection. The record does not substantiate the claim that this check is taken over by the Carrier and made a substitute for the checks previously made by its own employees.

The record shows further that the Carrier has not reduced the number of positions at the Kansas City Freight House as a result of the elimination of the checking procedure in question.

Under the facts here involved it must be conceded that Petitioner's claim is lacking in merit. The Carrier does not appear to have violated the Scope Rule of the Agreement with the Organization. There is nothing to prevent the Carrier from assuming, if it wishes, the risks involved by eliminating the previous detail check upon LCL freight shipments received from Sears Roebuck and Montgomery Ward.

In view of the facts and circumstances here involved the claim will be denied. Awards 4388, 4100, 5331.

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 the Carrier did not violate the contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 24th day of June, 1952.