Award No. 5919
Docket No. CL-6009

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:

(1) That Carrier violated and continues to violate rules of our current Agreement, dated January 1, 1950, by assigning clerical work normally attached to clerical positions at C D Yard, District No. 36, E. St. Louis, Ill., to be performed by non-employes of the Carrier.

(2) That the two senior available employes of the Carrier, who may have suffered wage losses occasioned by Carrier's action as set forth in Section (1) hereof, be reimbursed for such wage losses sustained, retroactive to July 31, 1951, and to continue until the alleged violation is corrected.

Note: Actual monetary consideration involved in this claim to be determined by joint check of payrolls, records, etc.

EMPLOYES' STATEMENT OF FACTS: In the East St. Louis Yards of this Carrier, there is located an ice station owned and operated by the City Products Corporation (formerly City Ice and Fuel Co.). At this ice station, the refrigeration cars of practically all railroads passing through this terminal are re-iced. The Ice Company maintains a staff of employes to perform the manual labor necessary in connection with the icing of cars and also such clerical force as is necessary to maintain their records. The Terminal Railroad Association acting in behalf of its member lines, has entered into contract with the City Products Corporation for the supplying of ice to insure necessary refrigeration. It, in turn, collects from the member lines the charges for ice and salt used in the refrigeration operation.

Under the provisions of Division Sheet No. 4 of Tariff issued by J. J. Quinn, Agent, effective April 1, 1949, the Terminal Railroad Associaion collects from each one of the Carriers, a charge of $1.29 per car for supervision of the icing of each car, plus switching charges as provided for in this Tariff.

For many years, the Carrier has maintained a clerical position on the first shift at the Ice House (7 A.M. to 3 P.M.) to supervise the icing of

OPINION OF BOARD: A short statement is all that is required to outline the salient facts.

For many years the Carrier has had a contract with the City Products Corporation to furnish necessary ice and salt and to perform the work of icing refrigerator cars at its St. Louis Yards. Under the contract such Corporation is responsible for proper icing of the cars and liable for any claims resulting from negligent performance of the contracted work.

Since 1943 a Clerk has been maintained by the Carrier at the icing station on first shift to supervise the icing of cars, hours 7:00 A. M. to 3:00 P. M. On several occasions Carrier has established an additional clerical position at its ice yard on the second shift, hours 6:00 P. M. to 2:00 A. M., to perform duties similar to those performed by the Clerk on the first shift. That such a position had been established and was in existence on May 31, 1951, is evidenced by a bulletin advertising bids for a temporary vacancy thereon. It is also undisputed this position was bid in and awarded to a Clerk on June 6, 1951, that on July 25, 1951 the Carrier gave notice that effective July 30, 1951, such position was abolished, that subsequently the work of supervising the icing of cars on second shift hours was performed by the foreman of the City Products Corporation, and that the day before abolishment of the second shift position was slated to become effective the Organization protested its abolishment, and the performance of its clerical work by the foreman at the ice house. The record fails to disclose the Carrier ever established a third shift position on the location.

We are not in accord with the Organizaion's first contention that under the facts and circumstances of this case the Scope Rule (Rule 1) of the current Agreement, effective January 1, 1950, gave the Clerks the exclusive right to perform the work of supervising all icing of the cars in question. It is conceded that long prior to negotation of such Agreement the Carrier had been contracting the work to the City Products Corporation and it appears from the record that during that time the only supervisory position established and maintained by Carrier at the ice plant was the first shift Clerk position. In that situation we think it was necessary to include any additional supervisory work in the Scope Rule or elsewhere in the Agreement by specific reference and that having failed to do so the Organization cannot now be heard to say that in and of itself the Scope Rule gives the Employes the exclusive right to all the ice house supervisory work. This, we may add, holds true even though there may be some incidental clerical work involved in its performance.

On the other hand, we are unable to agree with Carrier's position the work of the second shift position is not encompassed by the Agreement. Our view is that Carrier's action in establishing that position and in awarding it to a regularly assigned occupant by bulletin and bid as late as June 6, 1951, long after execution of the present Contract, precludes it from contending the work of such position, as established, was not thereafter covered by its terms. Neither can we agree as the Carrier insists that the position was properly abolished. It may be, as it argues, that the work of such position had disappeared to the extent necessary and required in order to permit its abolishment but if so the facts of record fail to establish that fact. It follows the second shift position was abolished in violation of the Agreement and the Organization's claim with respect thereto must be upheld.

Heretofore we have pointed out the record fails to reveal that a third trick position was ever established on the property. Therefore, based on that fact and what has heretofore been stated in the Opinion regarding coverage of the Scope Rule under the existing conditions and circumstances, it also follows that the Organization's claim respecting the right to the work of that position cannot be upheld.

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 Carrier violated the Agreement but only to the extent indicated in the Opinion.

AWARD

Claims 1 and 2 sustained in part and denied in part as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 7th day of August, 1952.