

Award No. 6066
Docket No. CL-6112

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, 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:

(1) That Carrier violated rules of our Agreement when on or about June 19, 1950, it removed from under the scope of our Agreement work theretofore handled by employees included in the scope thereof at Price, Utah, the handling of LCL freight, and concurrent therewith transferred work incidental to the expensing of LCL waybills for freight destined to Price and LCL waybills for a freight destined to surrounding points, customarily handled at Price, from employees at Price in Seniority District No. 23 to employees at Salt Lake City Freight Station, Seniority District No. 34;

(2) That S. W. Marshall, regularly assigned to position of Clerk-Warehouseman at Price, Utah, hours 7:00 A. M. to 4:00 P. M., exclusive of meal period, rest days Saturday and Sunday, shall be paid four hours at time and one-half rate of \$12.20 per day, plus increase of \$1.00 per day effective February 1, 1951, for each day beginning June 19, 1950 as a result of the action cited in Section (1) hereof when work of unloading, checking and handling of railroad LCL freight was performed by employees of the Rio Grande Motor Way, Inc. and/or World Brothers Transfer in the Rio Grand Motor Way warehouse at Price instead of the usual and customary handling of this work by Clerk-Warehouseman Marshall in the railroad warehouse.

(3) That John Daskalos, regularly assigned to position of Night Ticket Clerk, hours 8:00 P. M. to 5:00 A. M., exclusive of meal period, rest days Thursday and Friday, shall be paid two hours at time and one-half rate of \$11.88 per day, plus increase of \$1.00 per day effective February 1, 1951, for each day (Monday through Wednesday) beginning June 19, 1950, when the work of expensing LCL waybills for railroad freight was performed in violation of rules cited in Section (1) hereof; and

(4) That A. E. Hunter, regularly assigned relief clerk scheduled to relieve Night Ticket Clerk Daskalos Thursday and Friday shall be paid two hours at time and one-half rate of \$11.88 per day, plus

increase of \$1.00 per day effective February 1, 1951, for each Thursday and Friday following June 19, 1950, when the work of expensing LCL waybills for railroad freight has been performed in violation of rules cited in Section (1) hereof.

EMPLOYEES' STATEMENT OF FACTS: During the month of May, 1950, it became generally known to the employees of the Carrier that Management proposed a change in the handling of its LCL freight that would particularly affect the employees at Helper, Provo and Price, Utah. This prompted our Division Chairman to address the Carrier's Superintendent at Salt Lake City on May 12, 1950, advising him of the employees' position in connection with the subject matter. Employees' Exhibit No. 1.

May 13, 1950, Superintendent Decker acknowledged our letter of May 12, as evidenced by his letter to Division Chairman Eklund. Employees' Exhibit No. 2. This was supplemented on June 19 by another letter to Mr. Eklund. Employees' Exhibit No. 3.

During the interim Manager of Personnel Mr. Herdman also addressed us about the contemplated change, stating in substance that LCL freight would be handled by the Rio Grande Motor Way, Inc., from Salt Lake City to Provo, Helper and Price, Utah. The Management proposed incidental to this change in handling of its freight business at Provo, Helper and Price that we negotiate an Agreement solely on the question of the transfer of the work of revising expensing LCL waybills from destination stations to Salt Lake City Freight Station. The Carrier's proposal—letter of June 2, 1950—is attached hereto as Employees' Exhibit No. 4. As will be noted, the Carrier's proposal involved the application of Rule 21 of our General Rules Agreement reading:

"Rule 21. When work of a seniority district and/or a number of seniority districts is withdrawn and established within another seniority district, under a centralized bureau or department, the rights of the employees directly and indirectly affected will be established by negotiation and agreement."

whereas, we did not consider this rule (21) as being in any manner whatsoever involved in the Carrier's proposed change of handling its freight affecting employees covered by the Scope Rule of our Agreement at Price, also Provo and Helper, and the Salt Lake City Freight Station.

Notwithstanding the fact that negotiations for an understanding and/or Agreement, which Management acknowledged was proper, had not been consummated, the Management unilaterally on or about June 19, 1950 discontinued the handling of LCL freight over its line of railroad between Salt Lake City and Price, Utah. Thereafter and continuing up to the present time, LCL freight routed via The Denver and Rio Grande Western Railroad destined Price and the towns as stated above has been delivered by the Carrier at its Salt Lake City Freight Station to Rio Grande Motor Way, Inc., for movement over the highway to Price, Utah. The railroad waybills and freight bills being delivered to the Motor Way Company at Salt Lake City at the time of delivery of the freight shipments.

On arrival of the Rio Grande Motor Way over-the-highway trucks at Price, the railroad LCL freight is unloaded, checked against railroad freight bills and handled by employees of the Rio Grande Motor Way, Inc., and/or employees of World Brothers Transfer (a contract drayage firm for Rio Grande Motor Way, Inc.), who perform all the warehouse work involved in the handling of the railroad LCL freight in the Motor Way Company warehouse. Price is the eastern terminus of Rio Grande Motor Way, Inc., in Utah. On completion of the warehouse work the employees of Rio Grande Motor Way, Inc. and/or the employees of World Brothers Transfer load the railroad LCL freight in World Brothers Transfer truck for delivery to consignees in Price City. The railroad LCL freight destined Dragerton, Columbia and Sunnyside

comes effective as of June 1, 1941, remaining in effect thereafter subject to the provisions of the Railway Labor Act, Amended June 21, 1934, unless changed by mutual agreement.

FOR THE CARRIER:

J. E. KEMP,
Assistant General Manager

FOR THE EMPLOYEES:

W. D. RYAN,
General Chairman, B. of R.
& S. S. C. F. H., E. & S. E.

Dated at Denver, Colorado, June 2, 1941."

no retroactive claim for compensation can be made to be effective prior to 90 days from the initial date claim is presented.

All data in support of the Carrier's position has been submitted to the Organization and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by Organization is reserved by Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier states, and the Brotherhood acknowledges as correct, that this claim presents the following:

(1) Transfer of certain clerical work (expensing of waybills) from Price, Utah, Seniority Roster 23, to Salt Lake City, Utah, Seniority Roster 34.

(2) Unloading, checking and handling of railroad LCL freight at Price by employes of the Rio Grande Motorway.

Carrier, effective as of June 19, 1950, contracted with the Rio Grand Motorway, Inc., to handle LCL freight shipments from Salt Lake City for movement to and delivery at Price and points adjacent. On the same date it transferred from Price to the Salt Lake City freight station the work of expensing waybills covering LCL shipments to Price and points adjacent thereto.

The acts here complained of became effective on June 19, 1950. No claim was actually filed until April 17, 1951. Carrier contends this was out of time, citing Rule 25 of the parties' Agreement, or not retroactive for more than 90 days, citing the parties' "Memorandum of Agreement" executed June 2, 1941, which relates to the application of Rule 25.

Rule 25 relates to an employe who considers himself unjustly treated whereas the "Memorandum of Agreement" relates to an employe making claim of improper classification or payment for services rendered. Neither situation is here present. The claims here made by the Brotherhood, one for an alleged violation of the Scope Rule and the other for an alleged violation of the rights created by district seniority, are to maintain the integrity of the Agreement. While monetary claims are included in behalf of certain individuals they are only incident thereto as a penalty to see that the prime purpose of the claim is fulfilled, which is to protect the work coming under the Agreement for those who are entitled to it. See Awards 2282, 3256, 4370, 4539 and 5195 of this Division.

The next question is, did Carrier have the right to unilaterally transfer the clerical work of expensing waybills from Price to Salt Lake City, the clerical employes of which are under a different District Seniority Roster?

See Rule 5 of the parties' effective Agreement. It claims this right under Rule 21, which is as follows:

"When work of a seniority district and/or a number of seniority districts is withdrawn and established within another seniority district, under a centralized bureau or department, the rights of the employees directly and indirectly affected will be established by negotiation and agreement."

Ordinarily Carrier may not unilaterally remove work from the confines of one seniority district and put it in another.

Rule 21 is a rule dealing specifically with the factual situation before us and is controlling over Rules 3 and 5 of the parties' Agreement, which are general in character. See Awards 4959, 4988, 5213 and 5220 of this Division. By the language used the rule does not restrict or limit the Carrier's right to handle the work as it thinks best but expressly recognizes that it may withdraw work from one seniority district and transfer it to another. The only condition it places upon Carrier's right to do so is that the rights of the employees directly and indirectly affected will be established by negotiation and agreement of the parties. See Award 4560 of the Third Division. This the Carrier sought to do but the Organization refused. Under such circumstances the Organization is not in position to complain that an agreement to that effect has not been entered into.

That such has been the interpretation given this rule by the parties on the property is evidenced by the Agreement of February 16, 1950, when Carrier had moved similar work from Durango and Craig, Colorado, in one seniority district, to Denver Station and Yard Forces, another seniority district.

Was the checking and handling of these LCL freight shipments at Price, done in the facilities of the Rio Grande Motorway, Inc., by employees not covered by the Clerks' Agreement, in violation of the scope thereof?

Any work necessary in performing the functions of a common carrier belongs to the classes of employees that have secured it by their collective agreements with it. So long as the work exists in the prosecution of Carrier's business it is theirs under the Agreement and cannot be removed therefrom and assigned to employees not subject thereto.

Here the Carrier contracted with the Rio Grande Motorway, Inc., to haul its LCL freight shipments from Salt Lake to Price for consignees at Price and points adjacent thereto. This it had a right to do. See First Division Awards 6317, 11791 and 11792. The checking and handling of this LCL freight at Price, done in order to deliver it to the consignees or their agents, completed the hauling of this freight by the Rio Grande Motorway, Inc., and an incident thereof. After the LCL freight shipments were turned over to the trucking company at Salt Lake the work in connection therewith no longer existed with this Carrier in the prosecution of its business. It was no longer a railroad operation.

In view of the foregoing, we find the claims as made to be without merit.

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 30th day of January, 1953.