

Award No. 6181

Docket No. CL-6135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the current Clerks' Agreement at Dallas, Texas, when on April 2, 1951, they employed the use of Armored Car Service, an organization separate and apart from the Carrier and whose employees hold no rights under the Clerks' Agreement, to pick up and make daily bank deposits, purchase drafts and/or other paper used in making remittances for the Local Freight Office; and

(b) This work shall now be returned to the scope and operation of the Clerks' Agreement; and,

(c) The occupant of Position 368-B and/or other employees adversely affected by the change shall be paid one (1) hour per day at overtime rate of their respective positions from April 2, 1951, forward until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to April 2, 1951, it was the regularly assigned duty of an Assistant Cashier in the local Freight Office at Dallas, Texas, to make a trip each work day to the three banks with which this Carrier and its tenant Carriers transact business for the purpose of depositing daily receipts and to purchase drafts or other commercial paper used in making remittances. The time required to perform these duties averaged one (1) hour per day.

Effective on and after April 2, 1951, the duties described above were removed from the scope and operation of the Clerks' Agreement and turned over to the Armored Car Service, who in turn assigned these duties to their employees. The Armored Car Service is an outside concern whose employees are not covered by the Clerks' Agreement.

POSITION OF EMPLOYEES: The work here involved is routine schedule work that has heretofore been assigned to and for years has been regularly

Without prejudice to its position that the handling complained of at Dallas does not involve the performance of any clerical work, and that it is not violative of any rule of the current Clerks' Agreement, the Carrier also asserts that the overtime or time and one-half penalty claimed by the Employees is excessive and contrary to the Board's well established principle that the right to work is not the equivalent of work performed under the overtime rules of an agreement, and that the penalty rate for time lost is the pro rata rate. See Third Division Awards 3193, 3504, 4038, 4934, 5200 and many others.

CONCLUSION

In conclusion the Carrier submits that the claim of the Employees is without support under the current Clerks' Agreement and should be denied for the following reasons:

- (1) The employees included in the scope of the Clerks' Agreement hold no monopoly right to the performance of the work.
- (2) No position was abolished and no employee suffered financial loss.
- (3) There is no rule in the Clerks' Agreement and none cited by the Employees that support their position.

All that is contained herein has been both known and available to the employees or their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The claim states that the Carrier violated the Clerks' Agreement when it contracted with Armored Car Service to pick up and make daily bank deposits, purchase drafts and other paper used in making remittances for the Local Freight Office. Compensation is asked for occupant of position 368-B and other employees adversely affected by this change at one (1) hour per day at the overtime rate from April 2, 1951 until the violation is corrected.

The occupant of the regularly bulletined and assigned duties of Position 368-B, Assistant Cashier, hours 8:00 A.M. to 5:00 P.M., Dallas, Texas, made a trip each day to two or three banks to deposit daily receipts of the Carrier, who also acts as agent for tenant lines, and to purchase drafts or other commercial paper in making money remittances. This work consumes one (1) hour per day. Commencing April 2, 1951, the Carrier contracted with Armored Car Service to pick up the deposits and paper at the Freight Office from the Assistant Cashier, Position 368-B, and then make the deposits and do the other banking work that had been performed at the bank by the Assistant Cashier.

The Carrier states that cash and negotiable paper make up the deposits in the amount of 30 to 50 thousand dollars. The Employees maintain that little cash is involved; that most of the deposit is paper.

The Organization claims that this work belongs to the Claimant by reason of the Scope and Seniority Rules, that Carrier's Bulletin No. 140 of September 18, 1947, advertising a vacancy on Position 368-B, read as follows:

"Bringing forward red figures of Santa Fe, Frisco and L&A cash books; window work in the mornings which consist of delivering freight bills to patrons and cartage company; checking receipts from cartage company for freight which has been delivered the previous day; making deposits of Santa Fe, Frisco and L&A receipts at the bank; calling on patrons who are delinquent in the payment of freight charges; writing Frisco cash book, and such other duties as may be assigned." (Emphasis ours).

The Carrier contends that the use of Armored Car Service serves to eliminate a possible source of bodily harm and injury to its employes and a loss of Carrier's property due to hold-ups and robberies; that the Carrier has Armored Car Service or similar service provided by banks at six points on the Coast Lines. The Carrier started this Service first on December 20, 1942.

Numerous awards of this Board have stated that, as a general rule, a Carrier may not contract out work covered by its collective agreements. It has been equally well settled that work may be contracted out when special skills (Awards 3206, 4712, 5304, 5151), special equipment (Award 5151), or situations which present undertakings not contemplated by the Agreement and beyond the capacity of Carrier's force (Award 5304) are involved. The question here presented is one of managerial judgment, which is entitled to be considered, with the burden of proof on the Carrier to establish by factual evidence that the work was justifiably contracted out in all the circumstances (Awards 4671, 5151). The need for expensive equipment, armored cars and people skilled in the use of firearms may justify the farming out of the work to persons having the equipment to perform the work and employes to assume the risks incidental thereto. It is the function of Management, in the first instance, to determine the kind and amount of equipment needed (Award 5151).

We find that the Carrier has, by its evidence produced herein, established that the work was justifiably contracted out to the Armored Car Service in order to protect the employes from injury and maybe death, and also to protect its property and the property of others when it acts in the capacity of agent.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.