

Award No. 6525

Docket No. CL-6361

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When on or about August 1, 1949 it removed work consisting of trucking, checking and receiving freight at Lewistown, Montana out from under the scope and operation of the Clerks' Agreement and assigned or authorized a truck driver to perform said work, a party who holds no seniority rights under the provisions of the Clerks' Agreement entitling him to perform said work.

2. That Cashier J. W. Caffyn be compensated on the call basis, minimum of two hours pay at rate of time and one-half as provided for in Rule 38, for June 21, 1951 (date of initial claim) and each and every day thereafter that an outsider performed this work.

EMPLOYEES' STATEMENT OF FACTS: The station force at Lewistown, Montana consists in part of a Warehouseman, Clerk-Warehouseman, and the Cashier. All of these employees unload and check freight from trucks during their period of duty. On or about August 1, 1949, the Carrier, operating truck service between Billings and Lewistown, Montana, set the assignment of this truck so that it would arrive at Lewistown somewhere around the hour of 10:00 P.M., a time when none of the warehouse force was on duty. We understand that the Carrier furnished the truck driver with a key to the warehouse so that he could load, unload and handle this freight when the force was not on duty. This continued for some time before our Organization was aware of the fact that this practice was going on. On June 21, 1951, Cashier J. W. Caffyn filed claim for a call for June 21st account not called to handle this freight from the truck into the warehouse the same as he does with freight during his regular shift. This claim was later declined by the Agent. On August 6, 1951, our Division Chairman wrote the Superintendent as follows:

"Great Falls, Montana
August 6, 1951

"Mr. H. M. Shapleigh, Superintendent
Great Northern Railway Company

Referring to claims filed by employees Caffyn, Stene and McClellan at Lewistown account not being called to handle freight from Billings truck at night.

pieces of freight destined for Condon and to make an inspection with respect to damage which might have been sustained en route from Arlington to Condon and make notations thereof for the contract hauler's record."

4. While it may not be particularly material to this case, the truck drivers in the case before you are not employees of any contractor but are employees of the Carrier which operates rather extensive truck service in the State of Montana.

The Carrier, therefore, holds that in line with the expressed Opinion of your Board as set forth in Award 1647, et al, that under the circumstances in this case there has been no violation of schedule rules and that, therefore, the claim of the employees must be denied.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employee Representatives and made a part of the claim.

OPINION OF BOARD: There is no dispute on the essential and material facts in this case. The contentions of the parties in brief are as follows:

Petitioner contends that in permitting an over-the-road truck driver to place freight in the freight house from trucks unloaded at that point, Lewistown, Montana, Claimant shall be paid a call on each day that an "outsider" performed this work subsequent to June 20, 1951. That in allowing this to be done Carrier stands in violation of Scope Rule 1, Seniority Rule 4, Assignment of Overtime—Rule 37 and Rule 71—Date Effective and Changes, and Rule 38—Notified or Called, of the Agreement. Also cited in support of the claim are several awards of this Division.

Respondent Carrier defends its position by stating that the amount of work involved is very small; that Petitioner does not have the exclusive right to the work in question and that no position has been discontinued. Also that this work in question was not within the contemplation of the parties as belonging exclusively to Clerks when the Agreement was negotiated. Awards are also cited on behalf of Carrier to support the position taken.

The facts in brief show the freight in question is cartons of bread delivered at a time when no warehouse or clerks employees are on duty; the truck arrives at Lewistown from Billings, Montana, at approximately 10:00 P. M. daily; that the key of the baggage room or freight house is furnished to the truck driver who unloads the bread from the truck and places same in baggage room section of the freight house where it is called for in the morning by a truck driver for the bakery company.

The question is raised and discussed on behalf of Petitioner relative to alleged facts now presented by Carrier, i.e., different from those apparently considered on the property when the claim was being progressed thereon and originally given by Carrier as the basis for the action taken, re: certain work done by a Telegrapher on duty in connection with the operation. However, we believe that a sufficiently clear picture is presented here on which to base a finding without giving consideration to this phase of the controversy.

In a review of the awards cited and relied on by the parties in support of their respective positions we find distinguishing features from the factual situation here presented. We do not think that the act of furnishing a key to the truck driver is in violation of the agreement. Also, in the instant case there is no showing that freight handlers' equipment was used in moving freight within the freight warehouse, such as was the apparent situation in Award 5526. Also see Award 4463 relative to the furnishing of a key, to the act of counting or inspecting the pieces of freight and un-

loading on the warehouse floor, however, in that claim the driver separated the freight into three piles which determined the destination of the same and in so doing he was performing work of other employes covered by the agreement. Also see Award 4388, relative to handling such freight under similar circumstances. It is contended here by Petitioner that during day-time hours the method of unloading and handling is not pertinent to this dispute, also as to the method used at other points where train crews do similar work where no clerks are employed. Also stressed is Rule 37—Assignment of Overtime—which gives preference where overtime work is necessary where clerks are on duty during part of the day, citing Awards 1647 and 5526 with others. Carrier stresses custom and practice in such trucking operations in support of its position.

Undoubtedly the line of demarcation is close as will be noted from the awards cited, however, in the instant case we believe the factual situation presented is not sufficient to warrant a sustaining award. It is shown that the reason for placing the bread inside the baggage room was for protection against the weather, therefore, it was not placed on the platform which would have without doubt been permissible under facts here stated and there is no showing that the truck driver did the several acts which have resulted in sustaining awards cited. Under the factual situation here presented the placing of the freight inside the baggage room door in the manner described is not in violation of the rules cited.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim should be denied.

AWARD

Claim denied per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.