

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

1. The carrier violated the terms of the currently effective Agreement between the parties, governing hours of service, rates of pay and working conditions of clerical employees when, on December 19, 1951, it hired four outsiders, who held no seniority or other rights under the Clerks' Agreement, and who were not, in fact, otherwise employees of the Carrier in any capacity, off the street, at Chaffee, Mo. to transfer the lading of a shipment of cotton from a bad order car to a good order car and used three of them for six hours thirty minutes each and one of them for two hours thirty minutes, all at rate of \$1.00 per hour, at a time when regularly assigned employees were available and willing to perform the work.

2. Stowman A. C. Grojean and R. H. Moore and Trucker R. G. Dow now be compensated for six hours thirty minutes each at the rate of one and one-half times their regularly established rates.

EMPLOYEES' STATEMENT OF FACTS: Included in the Agent's station force at Chaffee, Mo. at the time of this claim were two positions of Stowman, rate \$1.552 per hour, occupied by A. C. Grojean and R. H. Moore, and one position of Trucker, rate \$1.504 per hour, occupied by R. G. Dow, all with assigned hours 12:01 A. M. to 8:01 A. M., Monday through Friday with designated rest days Saturday and Sunday. There were no extra or furloughed Group 3 employees available.

Car IC 25375, a carload of baled cotton moving from Malden, Mo. to Montgomery, Ala. was bad ordered at Chaffee, Mo. on December 18, 1951. Due to the nature of the defects, it was impossible to make repairs to the car without unloading, or transferring the contents to a good order car. Accordingly, the bad order car, IC 25375, and a good order car, SAL 18592, were set opposite each other on tracks No. 4 and No. 5, December 19, 1951 for the purpose of transferring the contents of car IC 25375 into car SAL 18592 by means of a running board between the doors of the two cars and use of hand trucks, obtained from the freight station warehouse.

The agent then went out on the street and hired three outsiders who held no seniority or other rights under the Clerks' Agreement and who otherwise

use other classes or crafts of employes such as those in the Mechanical Department or the Maintenance of Way Department or casual labor to perform such work without infringing upon the rights of employes covered by the Clerks' Agreement, and the claim being without merit and unsupported by agreement rules, this Division is respectfully requested to so find.

All data used in support of the Carrier's position have been made available to the employes and are made a part of the question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: This is a companion case to Award 6670, and Award 6671. It involves the work of transferring lading from a bad order to a good order car for which work the Carrier hired off street labor. The work was performed some 2400 feet distant from the station at Chaffee, Mo. under the jurisdiction of the Agent.

The disposition of this case is governed by our Opinion and Findings in Award 6670. In finding that an affirmative Award is warranted in this case we do not intend to indicate that all work performed in the transfer of lading from bad to good order is covered by the applicable Scope Rule. Our finding is limited to the instant work because of all of the circumstances surrounding its performance. Awards 4465, 3003 and 3004 which have been cited by Carrier in support of its position here were based upon different facts and different historical background from those here present as well as upon differently worded and more restrictive scope rules than the one involved in the Agreement here applicable.

It is shown by Carrier that on the date of claim the three outsiders worked four hours each. Compensation under this Award should be limited to payment for each Claimant under the Call Rule for that number of hours.

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;

This this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement as indicated in the Opinion.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1954.