Award No. 8236
Docket No. CL-9022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: The System Committee of the Brotherhood claims that:

(a) Carrier violated and continues to violate the terms of the currently effective Agreement between the parties, when on or about August 5, 1955, it transferred work out from under the Scope, Seniority and other provisions of the Agreement under an arrangement or contract with the Railroad Perishable Inspection Agency, by which the latter's employes were allowed and/or required to perform the inspection, checking of damaged goods, issuing of exception reports and other related clerical work on railroad carloads of freight consigned to the A & P Tea Company warehouse, Detroit, Michigan; and, therefore,

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

(c) Claimant J. Fodill and/or his successor or successors, if any, shall be allowed a minimum call on August 5, 1955, and each subsequent date thereafter at the rate of time and one-half for each day the Agreement is violated as a penalty therefor, such claim to continue until the condition is corrected.

EMPLOYES' STATEMENT OF FACTS: The work here in dispute has always been performed by employes coming under the Clerks' Agreement from its effective date, prior to the date here in dispute. However, on or about August 5, 1955, Carrier unilaterally entered into an arrangement or contract with the Railroad Perishable Inspection Agency to perform the work of inspecting, checking of damaged canned goods, issuing exceptions reports and other related clerical duties on all carload lots of freight consigned to the Atlantic & Pacific Tea Company warehouse, Detroit, Michigan.

Claimant J. Fodill has an established seniority date of **July 19, 1926** on the **Detroit Local Freight Office** Roster and was regularly assigned to perform the inspection of damaged canned goods, etc., received at the A & P Tea Company's warehouse prior to the removal thereof as a part of the assigned duties of his regular position, titled **Claim Inspector**, in the **Local Freight Office, Detroit, Michigan.**

rule have been when the work contracted was a new project and where the work required specialized skills not available among its normal complement of workers." (Emphasis supplied by Carrier.)

It is obvious that the Carrier could not of itself act as an impartial concern and it is likewise apparent that Fodill did not possess the necessary qualifications to perform the work in question. It is further pointed out that the R.P.I.A. also supplies similar inspection service for the Carrier at the National Foods Company and at the Kroger Company as well as at the Pabst Distributors in Detroit, without claims being received for their so doing.

All data contained herein have in substance been presented to the employes and are a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Here the Carrier, in concert with six other railroads serving the Detroit area—known as the Detroit-Toledo Terminal Committee of the Chicago Claim Conference—contracted with the Railroad Perishable Inspection Agency to "make inspection of all canned goods and other commodities at 11 warehouses in the Detroit area." Included were two A & P Tea Company warehouses.

According to the Organization, Claimant J. Fodill, seniority date July 19, 1926, has been regularly assigned, among other duties, "to perform the inspection of damaged canned goods, etc., received at the A & P Tea Company's warehouse prior to the removal thereof as a part of the assigned duties of his regular position, titled Claim Inspector, in the Local Freight Office, Detroit, Michigan."

According to Carrier's statement, Claimant Fodill "called on the A & P Warehouse, not to exceed three times per week, and made up a report of loss and damage from record of the A & P Tea Company. He made no inspection of the damaged goods removed from the car, neither did he inspect the load in the car or the car itself. Such being the case, he, of course, made no report of corrective action to be taken. * * *

> "His average time at the A & P Warehouse was estimated at two hours per day, not to exceed three days per week. * * *"

In illustration of the detail of Claimant's assignment, here in dispute, Carrier cites services performed by Claimant on June 2 and 16, and on July 18, 1955 at the A & P Warehouse. This indicates that on June 2, 1955, before Claimant Fodill performed any service, the A & P Company had (1) unloaded a car of peaches; (2) ascertained by its own inspection the number of cases found damaged; (3) turned the damaged cases over to Vital Products Company for reconditioning; (4) Vital Products Company examined all cans, and repackaged them in three categories: (a) good cases, (b) damaged cases for Railroad Salvage and (c) "leakers" or worthless cases. A & P subsequently turned over the damaged cases to the Arrow Salvage Company.

Carrier asserts Claimant Fodill arrived on June 8—6 days after the car was unloaded, at the Warehouse "and from the A & P records completed Form GT 3447."

Claimant's work on the other two dates was similarly detailed, and all supported by photo reproductions of the forms filled out by Claimant—duties which Carrier asserts "was simply making a transcript of Atlantic and Pacific Tea Company's records," and a notation Claimant visited the Warehouse from 6 to 13 days after the unloading.

Carrier justifies its contract with R. P. I. A. to handle all inspection work on these points: "The matter of loss and damage to perishable shipments is of great concern to the Grand Trunk Western and other railroads operating in the Detroit area. * * * it was determined (by all Carriers) that corrective measures should be taken by having the R. P. I. Agency act as the representative of the railroad at the Warehouses of the various concerns in the Detroit Terminal (so that) a trained inspector of the Agency was available at the various warehouses to inspect shipments at time of arrival and during their unloading * * * also enabled corrective steps to be taken where faulty loading * * * was responsible; * * * it was now possible * * * to make a scientific approach to the problem by utilizing * * * R.P.I.A. whose report is accepted as impartial by the consignee as well as the railroad. * * *"

Argument is offered on behalf of Carrier that "we are here dealing with Claimant's right, if any, to the new work which arose directly from Carrier's arrangement with the Railroad's Perishable Inspection Agency. In this respect the record clearly establishes that neither Claimant nor other employes in the local freight office had never (sic) performed such work."

Organization states it is "not here concerned with all of the duties performed by the outside Agency's employe, as detailed by Carrier * * *. We are interested only in the work previously assigned to and performed by the Freight Claim Inspector position, held by Claimant."

We must and do reject Carrier's view of what we are dealing with and accept the Organization's view, set forth above, because the claim before us clearly states that:

> "Carrier violated * * * the Agreement when * * * it transferred work out from under the Scope, Seniority and other provisions of the Agreement, etc."

As to what that "work" was, we have Organization's view, as hereinbefore outlined. It is not supported by Bulletin assignment. We also have Carrier's detailing of the work, previously quoted. It is supported by photo reproductions. It was clerical in nature.

While the parties are in agreement that the "work", whatever its detail, consumed two hours per day and not more than three days a week, we will accept Carrier's description of its detail. Carrier asserts Claimant was "a fully-covered employe."

The Rule upon which Organization relies is this provision of Rule 1:

> "Positions within the scope of this agreement belong to the employes covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

Among the many Awards cited by or on behalf of Carrier are five denial Awards in which the Referee here sitting participated.

One of these, Award 8081, contained a Rule somewhat similar to Rule 1 here, but it is distinguished because the Rule in that case referred solely to "positions" and made no mention of "work". The other four Awards (7841, 7784, 8092 and 8094) involved no corresponding or related rule—none was present.

Award 5774 (Munro) a denial Award, is also cited on behalf of Carrier. There the Carrier's action, its justification and the facts in general closely

parallel the situation here before us. There is one distinguishing factor: The agreement involved in Award 5774 did not contain any provision even remotely similar to Rule 1 here.

Much of the argument offered and Awards cited in behalf of Carrier have already been dealt with in this Award or by the record itself, e.g., Claimant Fodill is a fully-covered employe; the detail of the services he performed at A. & P. Warehouse as outlined by Carrier; the fact that these duties consumed at most six hours per week.

Rule 1, then, very clearly states that:

> "positions within the scope of this agreement belong to the employes covered thereby, and **nothing in this agreement** shall be construed to permit the removal of positions
>
> **or work**
>
> from the application of these rules
>
> **except by agreement between** the **parties** signatory hereto."
>
> (Emphasis added.)

We will, therefore, sustain part (a) of Organization's claim covering the clerical duties delineated to the extent of six hours per week. Award 7129 (Carter).

We must recognize a point raised by Carrier that Organization's claim on the property in behalf of Claimant Fodill, dated September 10, 1955, "was for a minimum call in behalf of Mr. Fodill, August 5th and subsequent dates;" that it was declined by Carrier's highest officer November 28, 1955 and thereafter August 3, 1956 amended to the language and form appearing in parts (b) and (c) of the claim as now before us.

We will sustain Carrier's objection on this point.

We are not unmindful of the reasons underlying Carrier's action in joining other Carriers in the Detroit area to engage the services of Railroad Perishable Inspection Agency. It is evident R. P. I. A. provided a thoroughly efficient service with an unchallenged reputation for impartial objectivity.

Having held the Carrier violated the Agreement in failing to confer in order to reach agreement with the Organization with respect to the affected portion of Claimant Fodill's work, we are therefore disposed to return part of the claim to the parties for agreement.

We will, however, sustain part (c) of claim as it was handled on the property, to-wit: that Claimant Fodill be allowed a minimum call retroactive to August 5, 1955 for each date on which the violation occurred, and for all subsequent dates until the violation is discontinued, or the issue resolved by agreement of the parties.

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 violated as indicated in the Opinion.

AWARD

Part (a) of claim sustained to extent indicated in Opinion.

Part (b) of claim is remanded to the parties for agreement.

Part (c) of claim as presented is rejected. In its stead we award that Claimant Fodill shall be allowed a minimum call retroactive to August 5, 1955 for each date on which the violation occurred, and for all subsequent dates until the violation is discontinued, or the issue resolved by agreement of the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1958.