

Award No. 11880
Docket No. CL-11960

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement on November 5, 1958, and continues to do so each day it allows, permits, and/or, requires employes outside the scope of the Clerks' Agreement to clean and furnish supplies for the cabooses used in through freight services at East St. Louis, Illinois.

(2) That Mr. J. T. Rafferty and Mr. W. S. Hardy be allowed a day's pay at the Group 2 rate, or the next senior, furloughed employes be allowed a day's pay for each day this violation continues.

(3) That a joint check of the Carrier's records be made to determine the amount of reparations due.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. T. Rafferty and Mr. W. S. Hardy are furloughed or unassigned employes at East St. Louis, Illinois.

The work of supplying local and through freight cabooses at various points on this railroad is work that is properly covered by the Brotherhood of Railway Clerks' Agreement with the Carrier and for many years this work was performed by employes of that craft.

Effective at 12:01 A. M., November 5, 1958, the Carrier discontinued servicing the through freight cabooses at Jonesboro, Arkansas, and Illmo, Missouri and further advised that these cabooses would be furnished supplies at Pine Bluff, Arkansas, and East St. Louis, Illinois, by the Yard Forces.

Therefore, when the pooling of the through freight cabooses went into effect at 12:01 A. M., November 5, 1958, it prevented employes covered by the scope of the Clerical Agreement from performing this work at Jonesboro, Arkansas, and Illmo, Missouri.

the work of checking and replenishing caboose supplies is work that may be incidental to the duties of various classes of employees. * * *."

Award No. 28, Special Board of Adjustment No. 173, Neutral Harold M. Gilden, involved claim of Clerks account coach cleaner permitted to supply cabooses. In denying the claim, Findings read, in part:

"Because routine labor tasks, which comprise a relatively minor part of the total job content, are included within a particular work classification, it does not mean that the incumbents therein, and they alone, are vested with exclusive performance rights.

"Under circumstances where a coach cleaner may rightfully engage in washing the inside and outside of two cabooses, he may, as an incidental function thereof, supply same with ice and water. * * *."

III.

Without prejudice to its position that the claim clearly is without merit under the rules and should be denied, Carrier submits there is no basis for the Employees' contention that the claim should be allowed under the time limit provisions of Article V of the August 21, 1954 Agreement. As previously stated, the claim was filed jointly with the Operating Department representative, Agent E. G. Rauch, and the Mechanical Department representative, Mechanical Foreman R. E. Cutrell. Carrier elected to process the claim through the Mechanical Department.

Article V of the August 21, 1954 Agreement does not require that the same claim be handled concurrently through two different departments. The claim as presented constituted only one claim and there was no requirement that it be handled as the Employees allege, through the two departments.

Carrier submits the claim was effectively denied and handled in accordance with the requirements of Article V. There is no basis for the Employees' allegation that payment is due under provisions of this Article.

In conclusion the Carrier repeats that the claim clearly is not supported by the rules and should be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees' charge that Carrier failed to comply with Article V, 1 (a) of the August 21, 1954 National Agreement is without merit. This one claim was appealed to two Carrier officers in two separate departments by the same employee representative. One of the two Carrier officers disallowed the claim in the time and manner required. It was not necessary that another Carrier officer do the same.

Carrier objected at its first opportunity (at the panel discussion) to exhibits attached to Employees' Reply to Carrier's Submission. Such exhibits should have been submitted on the property and attached to Employees' initial submission. Circular No. 1 of this Board.

The issue is whether the class of Employees to which Claimants belong have the exclusive system-wide right to clean and furnish supplies for cabooses,

by custom, tradition and past practice. There is no evidence that such class has performed any cleaning work. The supply work at different points on the system has been assigned to various crafts at various times. Employees have not sustained the burden of proof. The claim should be denied. Awards 11758 (Dorsey), 11239 (Moore), 10615 (Sheridan), 11756 (Hall), 11643 (Dorsey) and 11334 (Coburn).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.