

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOARD OF TRUSTEES OF THE GALVESTON WHARVES

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

(1) The Carrier violated the effective Agreement when in lieu of using its employees operating or firing its locomotive hoists to handle commodities at Pier 12 on October 9 and 10, 1958 and on January 22, 23, 26, 27 and 28, 1959, it assigned or otherwise permitted the work to be performed by outside forces.

(2) Locomotive Hoist Operator Herman V. Ermis, Firemen George W. Golden and C. L. Sanders each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim on October 9 and 10, 1958 and on January 22 and 23, 1959.

(3) Locomotive Hoist Operator Herman V. Ermis, Firemen Halbert Anderson and Grady Hinson each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim on January 26, 1959.

(4) Locomotive Hoist Operator Julius Berg, Firemen James Kolenovsky and Tracy Belrose each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim on January 27 and 28, 1959.

EMPLOYEES' STATEMENT OF FACTS: On October 9 and 10, 1958, and on January 22, 23, 26, 27 and 28, 1959, the Carrier assigned or otherwise permitted the Gulf Stevedore Company to use its Truck Crane and operator to handle commodities at Pier 12. This work has heretofore been

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission in this dispute.

All that is contained herein is either known or available to the Employees and their representatives. All known correspondence between the Carrier and Employees is attached as Exhibits "A" through "L".

(Exhibits not reproduced.)

OPINION OF BOARD: On October 9, 10, 1958, and on January 22, 23, 26, 27, 28, 1959 the Carrier permitted the Gulf Stevedoring Company to use its truck crane and operator to handle commodities at Pier 12. Galveston Wharves. The January 1959 claims cover situations similar to the October 1958 dates so we will only review the factual situation as presented in October. The S/S Penn Mariner loaded a cargo of flour in bags at Pier 12 Galveston Wharves. The Stevedoring Company loaded the vessel from the pier using the ships gear and a truck crane operated by their own personnel. The Carrier had previously handled the flour from rail cars into the pier warehouse with their own dock force.

It is the contention of the Claimants that the use of locomotive hoists for handling commodities is work encompassed within the scope of their agreement. Furthermore, the Carrier had usually and traditionally used its own employees to do this work.

The Carrier contended: The work was not covered by the existing agreement, as they do not perform the work of loading or unloading vessels of general cargo from the pier into vessels. This work being done by Stevedoring Companies with their own equipment and ships gear. In addition they received no revenue or incurred any expense after the cargo was unloaded into the pier warehouse and a receipt was secured from the S/S Company. The handling and control of the cargo by the Carrier ceased. Thus from this point on the cargo is loaded on the vessel by longshoremen under the direction of the mate and longshoremen. Hence if the Carrier did not control the cargo they could not assign the work to the Claimants.

We are of the opinion that an examination of the Scope Rule limits the parties to jurisdiction over commodities handled or controlled by Galveston Wharves. Thus it appears from the facts and record presented here that the placing of the cargo into the pier warehouse and receipted for by the S/S Company relieved the responsibility of the Carrier and placed the responsibility and control, of the movement of the cargo from that point into the vessel, on the S/S Company.

We are also of the opinion that Tariff Circular No. 4-B, the awards cited and past practices are not inconsistent with this conclusion.

Thus it is held that the Carrier did not have control of the assignment of work to the Claimant nor to the Stevedoring Company. Such work assignments were controlled by the S/S Company or its subcontractors the Stevedoring Company.

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 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 14th day of January 1964.