

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**
THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad, Eastern District (except Boston Division):

1. That Carrier violated the current Agreement when, effective January 1, 1957 it arbitrarily and unilaterally transferred to Car Department employees, who are embraced by the Shop Crafts' Agreement, the work of adjusting in-transit carload shipments in distress, that had been the regular and established assignment of a special force of freight truckers located at Buffalo, N.Y., known as the East Buffalo and Gardenville Transfer Track employees.

2. That Carrier return the work to the Freight Handlers who were hired and established for that purpose under the terms of our Agreement and in a separate seniority district.

3. That Carrier pay the following employees eight (8) hours each at time and one-half rate for every day on which Shop Craft employees were used to adjust said loads in the Buffalo territory, commencing January 23, 1957 until the aforesaid violations of our Agreement shall have been discontinued; this to cover work performed on any Saturday and Sunday, rest days of these employees, and for any and all days from which they were deprived work during their regular Monday thru Friday work week:

M. Siewierski	G. Falkenbach	R. Loudenslager
H. Gross	R. Green	R. Gross
N. Haller	I. Readinger	A. Lonczak
E. Dick	S. Klzyskowiak	E. Close
W. Brennan	R. Romanski	G. Schultz
E. Mertz		

S. Klrzyskowiak (Spelled "Skrzypkowiak".)	— Working
R. Romanski	— Dropped from roster by mutual agreement with the organization.
R. Loudenslager	— Working
R. Gross	— Working
A. Lenczak	— Furloughed
E. Close	— Dropped from roster by mutual agreement with the organization.
G. Schultz	— Working

CONCLUSION

Summarizing, Carrier maintains that the basic issue in dispute is one of jurisdiction, and that the claim should be dismissed by your Board for the reason that all parties with a vested interest in the work at issue have not been accorded an opportunity to protect their individual interests. Then too, the claim is also without merit. There has been no violation of the Clerks' agreement as to the manner in which Car Department employes have been handling cars. This is rather a continuation of an arrangement which has long been in effect, and your Board should not look with favor upon the Clerks' attempt to secure through an award of your Board a new agreement provision over and above that which was agreed to by the parties during contract negotiations.

Accordingly, the Carrier requests that if the claim not be dismissed for lack of jurisdiction that your Board deny it in its entirety for lack of merit or agreement support.

(Exhibits not reproduced.)

OPINION OF BOARD: In December, 1956, the Carrier placed in operation at Buffalo a new electronic yard, known as Frontier Yard. Prior to the establishment of the Frontier Yard, employes of the Carrier's cleaning track were used to adjust and transfer loads at the Buffalo Division, but in addition, loads were adjusted by the Carrier's Car Department Employes. There had been in operation at this point, a number of yards described as V. I. Yard, H. C. Yard, Main Track, Stock Yards, and West Shore, Gardenville and East Buffalo Transfer Track. Prior to the opening of the Frontier Yard, the bulk of the cars requiring transfer or adjustment were switched out and sent to the Gardenville Transfer Track or the East Buffalo Transfer Track, where correction was made by the employes known as freight truckers.

When the Frontier Yard was constructed, it did not contain a transfer track. When the Frontier Yard was put in operation, the Gardenville Transfer forces were moved back to the East Buffalo Transfer Yard and the Gardenville Yard closed. Thereafter the transfer work was sent to East Buffalo for transfer by the cleaning crew on the transfer track. The bulk of the adjustment work at the Frontier Yard was done by Car Department employes at the Frontier Yard. A portion of the adjustment work was done by the cleaning employes, at East Buffalo.

The claim involves only the adjustment work. It is clear from the facts that such work has not been exclusive to the Claimants, and that Car Department employes have also performed adjustment work. The Organization cites Awards 3003, 3004, and 4465 in support of its position. These awards con-

cerned transfer work but not adjustment work. In each award, the claim was denied, though the Organization contended that the work in question was covered by the Scope Rule. Award 3004 (Carter) contains the following language and quotes Award 615 (Swacker) as follows:

"In this connection the Division's attention is directed to the following portion of its Opinion in Award 615 (Referee Swacker):

"The Board does not intend in this case in the slightest to impinge upon or limit the principles asserted by the Clerks but it is a mistaken concept that the source of the right to exclusive performance of the work covered by the agreement is to be found in either the scope or seniority rules; they may be searched in vain for a line even implying that they purport to accord to the employees represented the exclusive right to the performance of the work covered by the agreement. The Scope rules describe the class of work; they do not undertake to specify directly the inclusion of all such classes of work; the Seniority rules merely control the disposition of the work that is available under the agreement."

Conclusive evidence that employees covered by the current agreement do not have the exclusive right to perform the work involved in this docket is found in the fact that it has always been the practice on the carrier's property to have section laborers, carmen, B. & B. Department employees perform this work when necessary."

The Organization has, in its submission, purported to list the transfers and adjustments made at Gardenville and East Buffalo for the 24 months of 1956 and 1957. It purports to show no adjustments by Car Department employees in 1956, and 530 adjustments by Car Department Employees in 1957. The list loses its probativeness when it fails to show who compiled it, or how it was compiled. It certainly is not a record kept in the usual course of business, and there is no showing that the compiler was in a position to know the full extent of all the adjustments made. The above comment must be considered in connection with the Carrier's undenied and positive assertion that Car Department Employees did perform substantial adjustment work.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.