

Award No. 12331

Docket No. CL-11826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated and continues to violate the Clerks' Agreement at New Orleans, Louisiana, when on May 19, 1958, it abolished Street Claim Inspector's Position No. 404, and concurrently therewith assigned the duties attaching to said Street Claim Inspector's Position No. 404 to the Special Agents, employees without the scope of the Clerks' Agreement, and

2. That the Carrier be required to restore the work that was formerly performed by the occupant of Street Claim Inspector's Position No. 404 under the scope and coverage of the Clerks' Agreement, from which it was removed, and

3. That as a penalty, because of such violative action in arbitrarily removing that work from under the scope and coverage of the Clerks' Agreement, the Carrier be required to compensate unassigned extra clerk V. S. Nelson, Sr., and/or his successors, if any, a day's pay at pro rata rate in the amount of \$18.02 per day, which was the rate of pay attaching to the abolished Street Claim Inspector's Position No. 404, effective May 19, 1958, and forward to the date this dispute is satisfactorily resolved, and

4. That B. A. Roser be paid \$2.60 per day, representing the difference in the daily rate of his former position from which he was displaced as a result of abolition of Street Claim Inspector's Position No. 404 on May 19, 1958, and the daily rate of the position to which Roser exercised his displacement rights, effective May 19, 1958, and forward to the date this dispute is satisfactorily resolved.

EMPLOYEES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood an Agreement, effective June 23, 1922, as subsequently revised February 1, 1954, covering working conditions of the employees, which Agreement has been filed with the National Railroad Adjustment Board,

The allegation that discontinuance of off-property inspections by the freight house personnel at New Orleans is prima facie evidence that work has been transferred to another craft is not true and is unsupported by facts. Experience showed Carrier that the inspections being made by the Clerk at New Orleans served no useful purpose. They were discontinued and the position abolished. The patrolmen, on the other hand, have continued to do what they have traditionally done for years, which is to photograph damaged cars and shipments at any location, whether on-property or off-property, when requested to do so. Their purpose is to contribute to Carrier's Freight Loss and Damage Prevention Program and not for claim settlement purposes as were the inspection reports prepared by Clerk George. Since the Special Agent's employees have performed this same function in this work for years prior to May 19, 1958, if what the Employees claim here were true, Carrier could have and should have abolished the position in question long ago. However, their allegations are not true because the inspection reports prepared exclusively for claim settlement purposes were used by the Carrier until they were completely replaced by the inspection waiver method.

The Carrier submits that it has shown, without a doubt, that there is no basis for this claim. No work exclusive to the position in question has been transferred therefrom and given to Special Agent Department employees covered by another agreement. The position was abolished because the duties exclusively assigned thereto were completely eliminated by Carrier's decision to waive off-property inspections.

The Employees have not and cannot furnish any proof whatever to support their assertions in this claim. In Third Division Award No. 9261, like many others, the Opinion held:

"Upon the whole record it appears that the Claim is not supported by any proof on matters which are material and vital to the sustaining of any part thereof. Because of the lack of such proof, we can not find that the Agreement has been violated."

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 19, 1958, two clerical positions were maintained at the Poydras Freight Station, New Orleans, Louisiana, known as "Street Claim Inspectors" or "Claim Investigators". Street Claim Inspector's Position No. 404, held by Claimant, was abolished on May 19, 1958. Position No. 642 was abolished on June 23, 1958. The normal duties and responsibilities of the employees assigned the positions were:

"Inspect concealed damage to LCL freight at Consignee's place of business; inspect C/L shipments of freight in cars and concealed damage to shipments unloaded from C/L shipments; inspect stop-over cars to determine if properly braced; handle inspection of C/L and LCL shipment of eggs; prepare necessary reports incident to all such inspections; and such other duties assigned to or incident to this position."

Claim Inspectors were under the supervision of the Freight Claim Department. Their inspections were usually made after the damage had been reported to Carrier, usually at consignee's place of business, sometimes before and at other times after all or part of the shipment had been unloaded. Some-

times the shipment was already in consignee's store or warehouse and at times partial delivery had been made to consignee's customers in which case inspection was made at the designated place or places where the product could be examined. Reports were made on Form 275 for LCL shipments and on Form 287½ for CL shipments and these were forwarded to the Freight Claim Department at Chicago where settlements of the claims were made.

Employees from the Special Agent's Department sometimes made independent inspections and took photographs of damaged shipments. Their reports were made to the Special Agent's Department. Neither the photographs nor the reports were used to settle claims. They were used for damage prevention purposes.

It is Petitioner's position that the work of the Street Claim Inspectors was not entirely eliminated and that the work is being performed by employees of the Special Agent's Department who are outside the Scope Rule of the Agreement.

Carrier contends that it instituted the practice of waiving inspection of damaged or short shipments; that this applied to C/L and LCL shipments; that this eliminated physical inspection; that the work of Street Claim Inspectors was no longer necessary; that Special Agents did not assume any of the duties and responsibilities of Street Claim Inspectors.

There is no question that Carrier had the right to abolish Street Claim Inspector's Position No. 404 which is involved in the claim now under consideration. The issue is whether work which had been done by Claimant had been assigned to Special Agents who are not covered by the Agreement.

The record shows that prior to May 19, 1958, the employees assigned to the positions of Street Claim Inspectors and those assigned to positions of Special Agents had separate and distinct duties and responsibilities. The former were Clerks covered under the terms of the Agreement whose primary duties were to determine the liability of a reported shipment damage or loss and assess the amount of such damage or loss, if any. Their reports were made to the Claim Agent's Department in Chicago for disposition. The Special Agents made special reports and took photographs of the alleged damage to freight. Their reports were not used in the settlement of claims.

Sometime prior to May 19, 1958, Carrier instituted the use of Inspection Waiver Form No. 2. Carrier has a right to waive inspection of the alleged freight damage or loss. Petitioner may not interfere with that right. It is Carrier's prerogative to acknowledge and assume liability without inspection.

On July 11, 1958, Carrier's Agent wrote to Petitioner's Acting Local Chairman, in part, as follows:

"There has been no assignment of duties performed by Claim Inspector to Special Agent's force. It has always been the practice for years when thought necessary to have pictures of alleged damage to freight, require Special Agents to take some pictures. As to reports made of their findings, this has always been customary and have never been considered as reports for the handling of claim matters."

Again on July 30, 1958, Carrier's Superintendent wrote to Petitioner's same officer repeating Carrier's position verbatim with that above quoted. On

October 7, 1958, Carrier's Manager of Personnel wrote to Petitioner's General Chairman, in part, as follows:

"... we find that for many years, Street Claim Inspectors have been called by patrons at New Orleans to inspect damaged freight shipments and have submitted reports therefore to the Claim Department. However, as time passed, a different method of handling freight damage claims was developed and instituted, that accomplished the same purpose, whereby the inspections by the Street Claim Inspectors were waived and the waiver form, accompanying the claim forms; were sent to the patron. The use of the inspection waivers increased to a point where the service requirements at the New Orleans Freight Agency did not justify the continuance of two Street Claim Inspectors positions and one was abolished May 19, 1958, when the work attached thereto was discontinued . . ."

In the same letter, Carrier continued as follows:

"The work performed by the Special Agent's employes has changed in no way since the subject clerical position was discontinued. The reports submitted in connection with the work of the Special Agent's Department are not used in a different manner from the way they have been used in the past, and they are not used in lieu of any reports formerly submitted by the abolished position of Street Claim Inspector."

The burden is upon Petitioner to prove that employes of the Special Agent's Department assumed all or part of the duties formerly performed by Claimant. On July 23, 1958 and again on August 7, 1958, Petitioner's Acting Local Chairman wrote to Carrier, in part, as follows:

"It is our position that all work pertaining to inspections, reports, keeping of records and other duties relative to damage claims as covered by the scope of our agreement and that the assignment of these duties to Special Agents or anyone else not under this agreement rules is a violation."

On August 13, 1958, Petitioner's General Chairman wrote Carrier, in part, as follows:

"The claim was the result of abolishing position No. 404, Street Claim Inspector and the duties of the position assigned to the special agents. Prior to May 19, 1958 the Street Claim Inspectors made inspections, compiled the necessary reports and maintained records pertaining to loss and damage claims. With the abolishment of position 404, the special agents were required to perform these duties in addition to taking photographs of damage in carload shipments."

These statements are mere assertions and not evidence. Since Carrier has denied these assertions, and has stated that the reports of employes of the Special Agent's Department "are not used in lieu of any reports formerly submitted by the abolished position of Street Claim Inspector", Petitioner is required to present probative evidence to sustain its claim.

The record in this case is rather voluminous. Both parties have introduced Exhibits purporting to support their respective positions. There are certain well established facts. First, photographing of damaged shipments was never

done by clerks. Second, there is no convincing proof that pictures taken by Special Agents, nor their reports replaced any of the reports made by Claimant prior to May 19, 1958. Third, no freight claim was ever settled locally by the freight agent. Claimant's reports were sent to the Freight Claim Agent in Chicago where claims were settled. Beginning on or before May 19, 1958, a patron who reported damage or loss of a shipment, was advised by the local freight agent that the Carrier waived inspection. See Carrier's Exhibits R, S-1, S-2, S-3, S-4, S-5, and T in the record.

Petitioner relies heavily on a comparison between its Exhibits 9-B and 10-B and with its Exhibits 11 to 23 inclusive. Exhibits 9-B and 10-B purport to be reports of Special Agents made on January 17, 1958 and January 28, 1958, respectively. Exhibits 11 to 23 inclusive are copies of reports of Special Agents made after May 18, 1958. Petitioner states that the reports in Exhibits 11 to 23 inclusive are more complete, detailed and comprehensive than their reports in Exhibits 9-B and 10-B. Thus, "Special Agents have taken over the duties and responsibilities of the abolished Street Claim Inspectors' positions."

The record does not support Petitioner's position. Petitioner's Exhibits 9-B and 10-B are not supplementary to reports made by Street Claim Inspectors. They are, instead, supplements to reports previously made by Special Agents. An examination of the Special Agents' full reports, which full reports are in the record as Carrier's Exhibit P and Q, reveals that they are substantially the same as the reports made by Special Agents after May 19, 1958, and noted in Petitioner's Exhibits 11 to 23 inclusive.

Petitioner has failed to present sufficient probative evidence to meet the burden of proof required to support its claim. On the evidence in the record, there is no basis for the claim.

Since the determination of the claim is made on its merits, there is no need to examine the procedural issue raised by the Carrier.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.