

Award No. 13460
Docket No. CL-13340

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5123) that:

1. Carrier violated the terms of the current Agreement between the parties when on or about September 1, 1959, it removed the work of rating, routing and waybilling outbound shipments of automobiles from Valley Park, Missouri from the scope and application thereof and assigned such work to outsiders who hold no seniority or other rights under the agreement and who are in fact, not employees of the Carrier.

2. J. E. Bass, C. H. Gray, B. K. Scott, Warren Pruitt and Wayne Gold now be allowed one day's pay at the rate of the General Clerk position for each day they are the available senior qualified employees from September 8, 1960 as reflected by the payrolls and other records of the Carrier, until corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 26, 1941, the station at Valley Park had been a one-man station with only force being an agent-telegrapher. On or about August 26, 1941 a position of station clerk was established to assist the agent in the handling of the station business. Duties attached to that position were: "Make expense bills on typewriter; assist in rendering 35 and 35a reports, and assist with other station work. Must be proficient in the use of typewriter." Although the waybilling of freight was not specifically listed in the Character of Work, the occupant of the position performed all kinds of station work other than telegraphing including assisting the agent with the outbound waybilling.

This position remained continuously until on or about March 5, 1954 when the position was abolished and the station returned to the status of a one-man station. It remained in that status until on or about September 1, 1959 when two yard clerk positions were established and on or about January 1, 1960 a General Clerk position was established. These clerical positions being established as a result of a large plant of the Chrysler Corporation being placed in operation on or about September 1, 1959.

The work of waybilling the automobiles in question has never been performed by employees of this Carrier. Such work is performed by Auto Terminals, Inc. as a part of the handling of the automobiles between Chrysler's releasing gate and the tie-down operation on the rail car. Auto Terminals produces the original waybill and enough copies thereof in one operation for itself, this Carrier, and the destination motor carrier.

The employees of Auto Terminals, Inc. perform all of the work involved in receiving, storing, loading, rating, routing and waybilling of automobiles at Valley Park. Auto Terminals, a subsidiary of Cassens Transport Company, bills this Carrier for such handling on a cost-per-vehicle basis. The charge is not based on single items of work, such as receiving, or storing, but it is a package charge which encompasses all handling.

In conclusion, the Carrier has shown that the disputed work is not reserved by Agreement to employees of the clerical class or craft and the Carrier has shown that such work has never been performed by clerical employees. From such presentation it is clear that the present method of handling this patron's business is not an encroachment upon the contractual rights of the Claimants.

Item 2 of the Employees' Statement of Claim names five extra or unassigned employees as claimants in this dispute. The claim as handled on the property was that only one of the claimants was entitled to a day's pay for each work day on and after September 8, 1960 and the proper claimant, among them, would be the senior available qualified extra or unassigned employee. Any other construction placed upon Item 2 of the Employees' Statement of Claim would be contrary to the manner in which this case was handled on the property.

The instant claim has neither merit nor Agreement support and it should be denied. The Board is requested to uphold the position of the Carrier and deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether the work of rating, routing and waybilling outbound shipments of automobiles from Valley Park, Missouri, is work belonging to the Organization and cannot therefore properly be subcontracted to be performed by employees not covered by the Agreement.

The Agreement does not explicitly reserve this work to the Organization; it may be found to be so reserved, however, if the history of the application of the Agreement shows a consistent practice of assignment of the work indicating that the intent of the parties was that, under the circumstance involved, the work belongs to the Organization. The burden of proving such a history is the Organization's. We find in the record that evidence offered to prove this history consists of four items: 1. an assertion in Organization's letter to the Carrier dated November 7, 1960: "My information is that the transport company makes the original waybill which shows routing, rates and extensions, etc., which work has for as long as there is any record, been performed by the station forces at Valley Park. . .", this was denied by Carrier in its letter to the Organization dated December 14, 1960: ". . . concerning the work in connection with billing outbound shipments of automobiles originating at Valley Park. Employees of the clerical class or craft have never performed such work."; 2. an argument and an assertion contained in the Organization's letter to the Carrier dated January 13, 1961: ". . . the records

show that the billing of outbound freight from Valley Park has been a part of the duties of the station force at that point for as long as there is any record. The fact that there may have been a new class of commodity being shipped from Valley Park does not in any manner change the fact that such shipments are covered by positions included in the scope rule of the Agreement and have been not only at this station but other stations for as long as there is any record."; 3. an assertion in Organization's letter to the Carrier asking reconsideration of Carrier's denial of the claim, dated March 29, 1961: "It has been recognized all over this railroad for many, many years that the waybilling of freight is a railroad operation and that clerical employees are entitled to perform such work when there are clerical employees available to do it."; and 4. the assertion in Organization's Ex Parte Submission: "The work of rating, routing and waybilling of outbound freight has been recognized on this Carrier as being clerical work for as long as there is any record and such work has been assigned to and performed by employees covered by the Clerks' Agreement at practically every point on the railroad where clerical employees have been employed. While it is true that agent-telegraphers have performed the work at points where there were no clerical employees, the fact remains that when the station work other than telegraphy becomes too heavy for such agent-telegraphers, to perform within their regular eight hour assignments and clerical positions have been established to assist the agent, a part of that assistance has been the waybilling of freight. That has been the case during the time there were clerical employees at Valley Park, Missouri, prior to September 1, 1959."

In view of the Carrier's denial of the fact as asserted in the November 7, 1960 letter, we do not find that the Organization has introduced sufficiently specific and weighty evidence of practice to prove that the parties intended that the involved work was reserved for employees covered by the Organization's Agreement.

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 8th day of April 1965.