

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5378) that:

(1) Carrier violated the Clerks' current Agreement in contracting the unloading of automobiles at the Cotton Belt Automobile unloading ramp, located in Bossier City, Louisiana, to the Southwestern Transportation Company.

(2) Utility Claim Clerks C. R. Ballard and George Brandon, and their successors, and Extra Trucker Manuel Casey, and his successor, Shreveport, Louisiana, be compensated for eight hours at the rate of time and one-half for each day beginning May 4, 1961, and to continue until the violation discontinues.

(3) That a joint check be made to determine reparation due each Claimant.

EMPLOYEES' STATEMENT OF FACTS: Claude R. Ballard is regularly assigned to position of Utility Claim Clerk, 3:30 P. M., to 11:30 P. M., Tuesday through Saturday, at the unloading ramp, making inspection of the automobiles. George Brandon is regularly assigned to Relief Utility Claim Clerk position working this position on Sundays and Mondays, same hours. Manuel Casey is an unassigned extra Trucker at the Shreveport Freight Station.

On March 1, 1960, Mr. J. R. Holden, General Superintendent, Pine Bluff, Arkansas, issued his Advertisement No. N-8 covering position of Claim-Utility Clerk, Shreveport, Louisiana, hours 3:00 P. M., to 11:00 P. M., rate \$19.36 a day with rest days of Sunday and Monday, with duties consisting of checking automobiles arriving TOF Ramp, Bossier City, Louisiana, making all exceptions, if any, maintaining record of arrival, spotting and unloading and posting car records in Yard Office, Shreveport Yard, and other related duties. The same advertisement covered Relief Clerk position No. 4 which relieved the Claim-Utility Clerk on Sunday and Monday. These positions were assigned

OPINION OF BOARD: This is a companion case to Award No. 13922. Both bases are concerned with the work involved in unloading automobiles from bi-level and tri-level cars at Carrier's ramp located in Bossier City, Louisiana.

This case differs from Award No. 13922 in that it is uncontroverted that Carrier contracted the unloading to Southwestern Transportation Company as alleged in paragraph 1 of the Claim.

The voluminous Submissions were exhaustively argued in Referee Hearing and Panel Discussion and were jointly studied in our consideration of each case.

We find no necessity for detailing herein the history of evolution in transportation of automobiles from box cars to "piggy-back" to bi-level and tri-level cars. It is common knowledge to those in the industry. Nor do we find relevancy, to adjudication of the dispute, in the arguments of the parties addressed to new concepts of transporting automobiles by rail; or, in comparisons of methods, past and present, employed in unloading; or, tariff prescriptions. From our analysis of the record as a whole we find that we are confronted, singularly, with the interpretation and application of a Scope Rule, general in nature. Otherwise stated, is the work of a nature — regardless of the method of performing it — reserved to the Clerks by the Agreement.

It has been long and firmly established by decisional rule of this Board that an organization laying claim to specific work — where the Scope Rule of the collective bargaining agreement is general in nature — has the burden of proving that the employees covered by the agreement have, historically and customarily, exclusively performed the work on the property. In the instant case Clerks failed to satisfy the burden. We, therefore, will deny the Claim.

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 26th day of October 1965.

LABOR MEMBER'S DISSENT TO AWARD 13923, DOCKET CL-14311

The Referee erred in finding the Scope Rule here involved to be ambiguous with respect to the work function of loading and unloading freight.

Employees covered by the Clerks' Agreement have historically been employed specifically for the purpose of performing the work of loading and unloading freight when, as here, it is the Carrier's duty to perform. Such employees are recognized as "Freight Handlers" in the title of the Organization and are listed as "Laborers employed in and around stations, store houses and warehouses," and "warehouse employees" in the Agreement here involved.

Additionally, the Scope Rule specifically sets out that:

"Truck drivers or other persons not covered by the agreement will not be permitted to perform any service other than that necessary to assist the warehouse employees in unloading freight from their trucks."
(Emphasis ours.)

which is a strict prohibition against "truck drivers or others" unloading freight.

The unloading of freight was the very work function involved in this claim. It was being performed for the Carrier by "truck drivers or others" (Carrier called them "City Drivers" or "Hostlers") but the Scope Rule reserved that work function to employees under the Clerks' Agreement and specifically prohibited the performance thereof by "truck drivers or others." The performance of this work under such an Agreement should not have been permitted to be done by "others."

There was no valid reason whatsoever for the Referee to find the Agreement ambiguous. He obviously did so in order to resort to the "exclusivity test" as basis for denying the claim.

Because I feel the "new work" theory also affected the Referee's judgment herein the parts pertinent thereto in the dissent to Award 13914, Docket CL-14234, is by reference made a part of this dissent.

I feel the Referee did not properly consider the Rules Agreement, facts of record, or arguments in this case. I, therefore, dissent to this Award.

D. E. Watkins
Labor Member
11-23-65