

Award No. 15537
Docket No. CL-15877

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

EAST PORTLAND FREIGHT TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5809) that:

(a) The East Portland Freight Terminal Company violated the Scope Rule of the Agreement when, on June 7, 1964, it required or permitted employees of another Company to perform work reserved to employees covered thereby; and,

(b) The East Portland Freight Terminal Company shall now be required to allow Mr. R. L. Anderson eight (8) hours' additional compensation for June 7, 1964, at the pro rata rate of Car Checker and Listing Clerk.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, with certain revisions including those effective November 16, 1947, (hereinafter referred to as the Agreement) between the East Portland Freight Terminal Company (hereinafter referred to as the Terminal) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On June 7, 1964, at approximately 1:00 A. M. and again at approximately 5:30 A. M., transfers arrived at East Portland Freight Terminal from the Brooklyn Yard of the Southern Pacific Company. The cars in the transfers were spotted from switching lists prepared by employees of the Southern Pacific Company. In the past, such switching lists had always been prepared by East Portland Freight Terminal employees coming under the scope of the Clerks' Agreement.

Mr. R. L. Anderson (hereinafter referred to as the Claimant) presented a claim for one day's pay at the pro rata rate of Car Checker and Listing Clerk for date of June 7, 1964, due to work of preparing switching lists involved with these transfers having been performed by employees of another

5. On Sunday, June 7, 1964, on two occasions, a Southern Pacific yard crew at Brooklyn Yard was instructed by the yardmaster to handle the cars listed as shown by the typed portion of Terminal's Exhibit A. While en route to the Terminal, cars were switched out and spotted by the crew as they came to the various industries along the way.

In the two instances here involved, the first time the crew arrived at the Terminal was about 1:00 A. M. and the second time was about 5:30 A. M., June 7, 1964. At those two times, there were no clerical employees on duty at the Terminal, and in each instance, the switch lists used by the yard crew to spot the cars en route were left at the Terminal's office for further handling by Terminal forces.

When the Terminal's clerical employee came on duty at a later time on Sunday, June 7, 1964, the switch lists were marked in longhand in the usual manner as shown by Terminal's Exhibit A. Such information indicated on the switch list was retained by the Terminal for office record purposes as described above.

6. By letter dated June 30, 1964 (Terminal's Exhibit B), Petitioner's Division Chairman submitted claim to Terminal's Agent in behalf of R. L. Anderson (hereinafter referred to as the claimant) for additional compensation for June 7, 1964, based on the premise "... work properly belonging to employees of the East Portland Freight Terminal ... was transferred to employees of another Carrier. . . ." By letter dated July 16, 1964 (Terminal's Exhibit C), Terminal's Agent denied the claim. By letter dated July 31, 1964 (Terminal's Exhibit D), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated August 20, 1964 (Terminal's Exhibit E), Petitioner's General Chairman appealed the claim to the highest officers designated to handle such disputes and by letter dated October 19, 1964 (Terminal's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Terminal is a joint agency of the Southern Pacific Company and the Union Pacific Company, which operates as a joint Freight terminal in the city of Portland, Oregon. Under a joint operating agreement between these two companies, switching service was performed for the Terminal by Southern Pacific yard crews and Union Pacific crews on an alternate yearly basis. Such switching service was being done by the Southern Pacific during the year 1964, when this claim arose.

Due to a reduction in the volume of business handled, on December 31, 1960, the position of yardmaster and the yard engine assignments were discontinued by the Southern Pacific and moved to that Company's yard at Brooklyn 2.4 miles distant.

Prior to 1961, and during the time the Southern Pacific maintained yardmasters and yard crews at the terminal, cars transferred from Brooklyn yard to the terminal were listed by Southern Pacific employees at Brooklyn on Form S-1310 "Switch List," which indicated thereon the car number, ownership the car's classification and contents, but the final destination of each car was not indicated in the space provided until the cars had been transferred to the Terminal. At this point the Southern Pacific yard crew delivered the Switch

List to the Terminal office and the Terminal clerical employees placed additional information on the list received from Brooklyn by writing thereon the location of track or name of industry opposite the numbers of each car listed. Thereafter, the switching movements were completed and the switch list became part of the Terminal's records.

Subsequent to December 1960, a change in the procedure relating to the delivery of cars by Southern Pacific yard crews was inaugurated. The actual move of cars from the Southern Pacific Company yard at Brooklyn to the Terminal was changed. In the case of cars destined for industries between Brooklyn yard and the terminal, which prior to the change would have been handled by the Southern Pacific yard crews to the Terminal and thereafter distributed to industries by engines based at the Terminal working toward Brooklyn and back to the Terminal on the basis of long hand notation on the Switch List, under the changed operation, at the direction of the yardmaster at Brooklyn, the involved engine Foreman with crew handling cars enroute the Terminal placed cars for industries between Brooklyn and the Terminal on the going, rather than on the return trip and thus eliminated back haul of those cars. Upon arrival at the Terminal, the switch lists were presented to Terminal clerical employees who, in the same way they had before the change, marked them in long hand for record keeping purposes at the Terminal.

The foregoing operation of spotting cars for the various industries was in effect since early 1961. Prior to this claim, a rearrangement of personnel was made and where previously there had been clerical employees on duty around the clock, seven days a week, thereafter no one was on duty at the Terminal on the 12 midnight to 8:00 A. M. shift on Sundays. In this situation, there was no change whatever in the handling of cars to the Terminal, but instead of handling the switch list to a Terminal employee upon arrival at that point, a member of the yard crew placed the list on a designated desk where it was available for the clerical employee assuming duty at 8:00 A. M. to handle in the same manner as would have been done had a clerical employee been on duty to handle it when it was left by the yard crew member.

On the date in question, there were two instances when there were no clerical employees on duty at the Terminal, and in each instance the switch lists used by the yard crews to spot the cars enroute were left at the Terminal's office for further handling by Terminal personnel. When the Terminal clerical employee came on duty later, the switch lists were marked in long hand and filed.

The Organization contends that work properly belonging to Claimant has been effectively transferred to the employees of the Southern Pacific, and that even though the Claimant does in fact make the notations on the appropriate form, it is after the fact and as such constitutes a useless gesture. Petitioner also alleges a violation of the Scope Rule, which though general in content, is applicable to the instant case because practice, history, tradition, etc. has dictated that the work involved was performed by the Claimant over a period of years. Petitioner also contends that the Terminal employees have always taken the "consist," the typed portion and turned it into a switch list by placing thereon the consignee, location or track number.

The change in procedure was instituted as stated before in early 1961 and continued to the date of claim and presumably is still being followed. It is of special interest that this new procedure is in operation 7 days a week, 24 hours

a day. The same method is employed on the other 20 shifts where a terminal clerical employe is on duty. The instant claim is concerned only with the 21st shift when no clerical employe was on duty.

From a review of the facts and the submissions of both parties, exhibits etc., we cannot agree that the work involved was transferred out of Claimant's hands. He is still doing the same work he has done since early 1961. Indeed he is performing the same work he performed before Carrier changed its procedure. The time when the work was to be performed was changed, but the work was still to be done. Carrier retains its prerogative to determine when work will be performed. (Awards 7849 (Lynch), 11994 (Seff).) Carrier also retains its prerogative to rearrange existing work assignments to meet its operational needs unless it is limited in doing so by the Agreement between the parties. (See Awards 10009 (McMahon), 11793 (Seff), 12565 (Yagoda) among others.)

We conclude that there has not been a violation of the rules and 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 Employes involved in this dispute are respectively Carrier and Employes 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 28th day of April 1967.