

Award No. 16506
Docket No. MW-16975

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

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

(1) The Carrier has been in continuous violation of the Agreement since October 15, 1965 when it began assigning or otherwise permitting outside forces to transfer fuel oil from mobile tank cars (trucks) to the storage tank at Herington, Kansas, and as a consequence thereof

(2-a) Fuel Oil Foreman P. R. Hudson be allowed four hundred thirty-four and one half ($434\frac{1}{2}$) hours' pay at his straight time rate and three hundred eighty-one and one-third ($381\frac{1}{3}$) hours' pay at his time and one-half rate for the period of the violation extending from October 15, 1965 through June 20, 1966.

(2-b) For the period of the violation subsequent to June 20, 1966, Fuel Oil Foreman P. R. Hudson be allowed pay at his straight time rate for a number of hours equal to that consumed by outside forces in performing fuel oil transfer work during his regular assigned hours and payment for a call (2'40" at the time and one-half rate) for each time such fuel oil transfer work is performed by outside forces outside his regular assigned hours. (Carrier's Files L-126-898, L-126-899, L-126-908, L-126-911, L-126-913, L-126-914, L-126-920, L-126-932 and L-126-937).

EMPLOYEES' STATEMENT OF FACTS: The claimant established and holds seniority as a fuel oil foreman and was regularly assigned as such at Herington, Kansas, with a work week extending from Monday through Friday (Saturdays and Sundays were rest days). His assigned hours were from 8:00 A.M. to 5:00 P.M., including a one (1) hour meal period.

The Carrier uses a very substantial amount of diesel fuel oil in its operations at Herington, Kansas. Prior to the period here involved, such fuel oil was purchased from various independent oil companies and it was shipped to that location in rail transport tank cars. Upon arrival, the tank cars were

oil from railway tank cars and hoppers to storage tanks at various localities. The means by which this is accomplished is as follows: Fuel oil is purchased from a supplier and shipped over the Carrier's rail line in a railway tank car to Herington, Kansas. Upon arrival at Herington, the tank car is switched from the train and, upon demand, spotted at the fuel station by the Carrier's forces (switchmen) for unloading.

The Fuel Foreman then connects several hoses to the loaded tank car from the storage tank. After this has been completed, he manipulates certain valves and with the aid of a power pump, located in the fuel station and designed specifically for this purpose, the fuel oil is transferred from the railway tank car to the storage tank. After the transfer has been completed, the power pump is shut off, the hoses are disconnected and the operation is complete.

5. The Carrier, in order to modernize this cumbersome operation, and in the management's judgment effect a more economical and efficient operation, instituted a change in the methods and procedures for the procurement of fuel oil. The new procedure is as follows: The Carrier purchases fuel oil from suppliers located near the point where the fuel oil is needed. In the instant case, fuel oil is purchased from Skelly Oil Company, located at El Dorado, Kansas, and delivered to the Carrier's facilities at Herington, Kansas.

After the tank truck arrives with its load of fuel oil, the driver of the truck connects a single hose from the truck to the storage tank and pumps the fuel oil into the storage tank with the aid of a pump located on the truck. When the transfer of fuel oil has been completed, the driver turns off the pump and disconnects the hose from the storage tank. At no time, during this process, does he use other than equipment located on the truck to accomplish this transfer.

6. The claimant, P. R. Hudson, is the regularly assigned Fuel Foreman at Herington, Kansas. Relief for this position is provided by various classes of employees. With the implementation of having trucks deliver fuel oil under the above procedure, Mr. Hudson has remained continuously employed as a Fuel Foreman at Herington, Kansas. His duties or responsibilities have not changed or increased due to this change in methods and he has suffered no loss of compensation.

7. Correspondence and other information pertinent to this case is attached as the following Carrier Exhibits:

"A" Letter from Vice President-Labor Relations to General Chairman, dated May 9, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to October 15, 1965, fuel oil was purchased and shipped over Carrier's line in rail tank cars. Unloading of such tank cars at Herington, Kansas, was assigned to and performed by employees classified as fuel oil foremen, who connected several hoses to the rail tank cars from the storage tank, manipulated certain valves, and with the aid of a power pump located in the fuel station, transferred the oil from rail tank cars to the storage tank. When completed, the power pump was shut off and hoses were disconnected from the tank car.

On or about October 15, 1965, fuel oil began to be delivered by highway tank trucks. The truck driver would connect a single hose from the truck to the storage tank. When completed, the driver would shut off the pump and disconnect the hose from the storage tank.

Organization filed the instant claim asserting the right of fuel oil foremen to unload fuel oil from the highway tank trucks. Organization asserts that the work here in dispute is embraced within the parties' Agreement and cannot be unilaterally removed, or contracted out. It asserts that the work is identical to that historically performed on tank cars; that it is done wholly on Carrier's property; and that, therefore, it should be reserved to Claimant.

Carrier argues that the fuel oil was purchased delivered; that delivery into storage tanks was done with vendor's equipment; and that Carrier had no right to order its employees to work on the vendor's equipment. It asserts that Carrier has the right to eliminate work unless proscribed by the Agreement; that there is nothing in the parties' Agreement which limits Carrier's right of purchase, and that since Carrier had no control over the fuel oil and the equipment used to effect delivery, the claim that unloading should have been done by covered employees should be denied.

There is no question when fuel oil was delivered by tank cars to storage tanks that the fuel oil foreman handled the hoses, valves, and pumps located at the storage tank to receive the oil. This was work done in connection with fuel oil that was already in railroad tank cars and in the effective possession of the Carrier. This fuel was not being initially delivered to the Carrier, but was being transferred from one facility within its control to another.

The delivery of oil in tank trucks directly from the outside vendor's possession into the storage tanks constituted a new procedure for handling deliveries. Carrier was within its rights in contracting for the purchase of delivered fuel oil as it might for delivery of any other commodity (15537). It was not required to purchase the fuel at the vendor's place of business, and arrange for delivery by its own employees. The vendor's employees had control of the fuel oil until it actually passed into the possession of the purchaser. It would be unreasonable, inappropriate and inconsistent to expect the vendor to surrender its tank truck equipment to Carrier personnel when it crossed over onto its property. Obviously, the vendor had the right to operate its equipment until the actual delivery of the fuel oil was accomplished (9539). This right extended to the operation of the truck's pump and hose. A different result might have been obtained if the truck driver utilized the storage tank pump valves and hose, over which the fuel foreman would appear to have jurisdiction, but that did not occur. It is difficult to justify the Carrier's assignment of its own personnel, such as the fuel oil foreman, to operate equipment owned by an outside Company, and over which it has no legal authority or control before the material therein comes under Carrier's ownership. To claim that the intended purchaser had the right to operate the vendor's equipment is tantamount to holding that the purchaser of goods being moved by a railroad has the right to operate its rolling stock, or even its tank cars.

We find nothing in the parties' agreement which limits management in its right to purchase materials, or to specify the place or technique for delivery thereof (14060). To hold as the Organization urges that this work is reserved to fuel oil foremen would require a limitation on Carrier's and vendor's right of purchase and sale and delivery of fuel oil, which is an unjustified infringement on management prerogatives.

Organization refers to an October 13, 1959 letter of understanding dealing with handling fuel oil transfers, but that reference antedates the use of tank trucks for delivery, and specifies "from mobile tank cars to the storage tank car." We are concerned in this case with highway tank trucks rather than the rolling stock there envisioned.

Similarly in Carrier unilaterally promulgated Rule 354 fixing fuel station foreman responsibility "for unloading and transfer of fuel to storage facilities", relied on by Organization, it would be inconsistent to hold that that phrase grants jurisdiction over the disputed work to the Claimant without at the same time extending their jurisdiction to cover the next part of the rule: to see to it that the vendor's delivery truck and its equipment "... is lubricated and free of foreign material and properly adjusted." Obviously, this is an extension of the fuel station foreman's jurisdiction that cannot be imposed upon the vendor of fuel oil.

"Management should not be limited in its managerial prerogatives by placing a strained construction upon a rule that was never mutually intended by the parties. Such limitations upon the primary functions of management can be obtained only by negotiation, a function in which this Board can take no part." (5044, Carter)

In view of the foregoing, we conclude that the work performed by the truck drivers was not covered by the parties' Agreement, and did not constitute an elimination of work reserved to the fuel oil foreman. The Agreement was not violated, and the claim should be denied.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1968.

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