Award No. 18555
Docket No. CL-18804

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY (South-Central District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6788) that:

1. The Carrier violated the controlling agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and the Union Pacific Railroad Company when, on May 24, 1969, Carrier, through contract with Insured Transporters, instituted practice of unloading jeeps by an employe of Insured Transporters.

2. Carrier shall now be required to compensate claimants as follows:

J. Young and B. McMillan, Jr.
8 hrs. ea. Caller-Stower May 24, 1969

L. Lazenby and D. Mortensen
8 hrs. ea. Caller-Stower May 28, 1969

B. C. Henschke and W. Hatch
8 hrs. ea. Caller-Stower June 2, 1969

J. Manarolla and J. Kingston
8 hrs. ea. Caller-Stower June 8, 1969

R. Brewster and J. Anderson
8 hrs. ea. Caller-Stower June 15, 1969

J. Anderson and B. McMillan, Jr.
8 hrs. ea. Caller-Stower June 16, 1969

J. Anderson and B. McMillan, Jr.
8 hrs. ea. Caller-Stower June 17, 1969

3. Carrier shall also be required to compensate the named and unnamed claimants on a continuing basis subsequent to June 17, 1969, for each occasion when the work of unloading jeeps is performed by the contractor.

4. Carrier shall be required to restore the work of unloading jeeps to employes of the Carrier covered by the Scope Rule of the Agreement between the Carrier and the Brotherhood of Railway, Airline and Steamship Clerks.

EMPLOYES' STATEMENT OF FACTS: Claimants are bona fide employes of the Carrier and have acquired a seniority right to perform contractual work reserved to the class or craft represented by the Brotherhood of Railway, Airline and Steamship Clerks.

Beginning May 24, 1969, Carrier awarded the unloading of new Kaiser Jeeps shipped from Toledo, Ohio to Salt Lake City, Utah to Insured Transporters. Tariff provision covering the shipment of automobiles requires the Carrier to unload the automobiles, and the cost for so doing is included in the transportation costs. For the services performed by the employe of Insured Transporters, the Carrier remunerates Insured Transporters a mutually agreed upon sum.

In performing these services for the Carrier, use is made of facilities fully owned by the Carrier on property owned by the Carrier. When the employe of Insured Transporters is not using the facilities, the Carrier's employes under the scope of the agreement with the Brotherhood of Railway, Airline and Steamship Clerks, handle the unloading of other makes of automobiles by the use of the same facilities.

Claim was filed by the Vice General Chairman with the Supervisor of Wage Schedules on June 18, 1969. (Employes' Exhibit "A")

Claim was declined by the Supervisor of Wage Schedules on August 13, 1969. (Employes' Exhibit "B")

Declination of decision of the Supervisor of Wage Schedules was rejected on August 16, 1969. (Employes' Exhibit "C")

Claim was placed on appeal with the Assistant to Vice President by the General Chairman on September 10, 1969. (Employes' Exhibit "D")

Claim was declined by the Assistant to Vice President on September 23, 1969. (Employes' Exhibit "E")

Conference was requested with the Assistant to Vice President on October 8, 1969. (Employes' Exhibit "F")

Conference was held on October 28, 1969.

Decision of declination of the claim was reaffirmed by the Assistant to Vice President on October 30, 1969. (Employes' Exhibit "G")

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: For many years, automobiles moving via rail were transported in specially designed and constructed box

Insured Transporters, Inc. in exactly the same number as was formerly done at Ogden.

Despite the fact that the Organization had long accepted this method of handling the unloading of the jeeps at Ogden, when this function was handled in exactly the same manner at Salt Lake City, claims on behalf of the claimants were filed on the basis of the contention that such handling allegedly violated Rule 1, the Scope Rule, of the Agreement. The handling of this claim is indicated by the copies of correspondence attached as Carrier's Exhibits as follows:

Carrier's Exhibit A — Letter of June 18, 1969, to Vice General Chairman Meier to Supervisor of Wage Schedules J. S. Godfrey presenting the claims.

Carrier's Exhibit B — Supervisor of Wage Schedules Godfrey's letter of August 13, 1969, declining the claims.

Carrier's Exhibit C — Vice General Chairman Meier's letter of August 16, 1969, advising Mr. Godfrey that his declination was unacceptable.

Carrier's Exhibit F — General Chairman Hallberg's letter of September 10, 1969, appealing the claims to Assistant to Vice President Lott.

Carrier's Exhibit E — Mr. Lott's letter of September 23, 1969, declining the claims.

Carrier's Exhibit F -- eGneral Chairman Hallberg's letter of October 8, 1969, to Mr. Lott requesting a conference.

Carrier's Exhibit G — Mr. Lott's letter of October 30, 1969, confirming the conference and reaffirming his denial of the claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The factual background for this claim is not in dispute. The Carrier transferred the work of unloading Kaiser Jeep shipments from Ogden, Utah to Salt Lake City. The disputed work of unloading automobiles had been performed at Ogden by a contractor and this out-contracting was continued for the unloading of Jeeps at Salt Lake City. The claim charges that the Scope Rule was violated and that employes within the scope of the contract were entitled to the work.

"(a) Clerks. Employes who regularly devote not less than four hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to the operation of teletypes and office mechanical equipment and devices in connection with such duties and work.

* * * * *

(b) Other office, station and stores employes, such as office boys, messengers, chore boys, train announcers, gatemen, baggage and

parcel room employes (other than clerks), train and engine crew callers, station helpers, telephone and switchboard operators, elevator operators, and watchmen (except in Special Service Department) employes engaged in assorting waybills and/or tickets, operators of office or station equipment devices, and appliances or machines for perforating, addressing envelopes, numbering claims and other papers, gathering and distributing mail, adjusting dictating machine cylinders, and other analogous service and laundry workers." * * *

The Organization contends that clerical employes have an exclusive right to this work which they have been performing since prior to 1962. It is further argued that since they have been unloading all automobiles at this location there can be no justifiable reason for contracting for the unloading of a single type of auto, solely because a contractor had performed the work at another point. The facilities owned by the railroad are used both by the Clerks and the contractor's employes and no special handling of Jeeps is required.

The Carrier asserts that the work has never been established as coming under the Scope Rule for Clerks at this location by well established practice and in any event, such practice must be established by proof on a system-wide basis. The parties are in agreement that a common practice for the assignment of this work does not exist system-wide.

The Organization concedes that at such location or locations where the railroad has not installed its own equipment for unloading autos, it has contracted the work to a contractor with the necessary equipment and facilities, and that such was the case at Ogden. But, it is argued, transfer of the work from Ogden does not justify a continuing relationship with the contractor where Salt Lake City has permanent facilities of its own for this purpose, and which has been used by the Clerks for a substantial number of years.

The Board is here faced with a determination first, as to whether the Clerks have established a past practice at Salt Lake City which gives substance to their claim and second, whether it must meet a requirement that such practice be established system-wide. The Scope Rule is general in character and does not assign this work specifically to mmbers of the Organization. In such case the Organization must bring forward strong evidence that its members have historically and traditionally performed the work in dispute.

Both parties rely heavily on Award 13914 (Referee Engelstein), involving the same parties and Agreement and essentially the same fact situation. In that case, the Board denied the claim directed at out-contracting of the work of unloading autos and concluded that the Organizaion had failed to show that the work in dispute had traditionally been performed by its members at that location. The Board, however, qualified its findings significantly when it stated in its conclusions that, "While Clerks have performed the work of unloading automobiles from flat cars, they have not performed this work of unloading from multiple level auto transport carriers at Portland or at other locations, **except where Carrier has installed a permanent ramp.** (Emphasis ours.)

In that case the Carrier made this distinction as to the equipment available at that or any other location as being determinative of how it would be handled and by whom. The fact that permanent equipment had not been installed at that location became its defense for out-contracting to a company

which possessed the necessary equipment. It is undisputed that Salt Lake City has had and was among the first locations to have installed permanent equipment for unloading of vehicles. Accordingly, it must be said that Award 13914, upon careful reading, is distinguishable from the case before us in one very important aspect. It held that the Carrier was justified in out-contracting because it had chosen not to intsall the essential equipment at that location; such equipment was installed and in use at Salt Lake City. The record confirms that the Clerks did customarily and historically perform the work of unloading at Salt Lake City both before and after the permanent installation of the unloading equipment.

Without conceding exclusive jurisdiction to the Clerks at Salt Lake City, the Carrier contends vigorously, citing many prior awards in support of its position, that such a construction of the contract must be shown by the Organization to be system-wide. As matter of general principle, his Board would concur that construction of contract language as evidenced by custom and practice must be found to be system-wide as representing the intent of the parties to a system-wide contract. Here, however, the finding of custom and practice relates to the physical facilities available at any given location. When the equipment was available, the Clerks performed the work; when it was not available, the Carrier exercised its right to have the work done by whatever means were available. In Award 13914 it was done by out-contracting, which action was upheld by the Board, with Labor member dissenting.

In the instant case the facilities were available, were used by the Clerks for a considerable period of time, and there was nothing required of the contractor in unloading Jeeps which differed from the routine of the Clerks in unloading other vehicles. The Board cannot find in the record evidence put forward by the Carrier which effectively rebuts these statements of the Organization.

On the basis of the whole record and the arguments advanced by the parties, the Board will sustain the claim, excepting part 4 which asks that the Carrier restore the work to employes covered by the Agreement.

It is a well established principle based on numerous awards that the Board lacks the power and authority to order restoration of work, to order specific work assignments, or the establishment or restoration of a position. It can only award compensation for breaches of agreements. By what method a violation is corrected is for the Carrier to decide. This Board cannot sustain part 4 of the claim.

FINDINGS: The Third Diviison 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 violated.

AWARD

Claim sustained as to parts 1, 2 and 3. Part 4 denied for reasons stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

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Serial No. 253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 18555

Docket No. CL-18804

Name of Organization:

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

Name of Carrier:

UNION PACIFIC RAILROAD COMPANY (South-Central District)

Upon application of the representatives of the Employes involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

After carefully reviewing the petition of the Organization for an Interpretation of Award 18555 (Docket CL-18804), and after carefully reviewing the response of the Carrier to the Organization's request, it is noted that not one allegation is made that any of the language of the Award is incomplete, uncertain or ambiguous.

Rather, it appears that this Board is being asked to consider a factual controversy regarding the compliance or non-compliance with the terms of the Award by the Carrier. This Board has often held in Interpretations rendered of previous awards that we are without authority to perform policing or enforcement functions of our Awards. The Award as made herein is clear and is not ambiguous. The question raised by the Organization in its request before us is not subject to interpretation by this Board.

Referee J. Thomas Rimer, Jr., who sat with the Division, as a neutral member, when Award No. 18555 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.

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