

Award No. 19105
Docket No. CL-17180

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6281) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin, when it assigned work covered thereby and regularly performed by Material Division employees to those of another craft and class not covered thereby.

2. Carrier shall now be required to compensate employees Paul Kloss and Terry Winter each for eight (8) hours at the overtime rate of Utility Storehelper Position Nos. 5237 and 5235 for December 22 and 23, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employees Paul Kloss and Terry Winter are regularly assigned Utility Storehelpers on Positions 5237 and 5235 respectively at the Milwaukee Shops Material Division, Milwaukee, Wisconsin. Their hours of assignment are from 7 A.M. to 3:30 P.M., Monday through Friday.

Material Division employees in Seniority District No. 118 at the Milwaukee Shops, which includes Utility Storehelpers, have throughout the years performed the work in connection with stock piling sand in Building CD-73.

The normal procedure in the handling of said for the Milwaukee Car Department is as follows: The Material Department is advised by the Car Department Foreman of the sand requirements. The Material Department Sectional Stockman then places an order for the sand. When the car of sand arrives, it is unloaded by the Material Department employee. When the sand is unloaded, the Car Department Foreman then charges it out on Form 189. Prior to the issuing of a Form 189, the sand remains under the jurisdiction of the Material Department. Thereafter the sand belongs to and is under the jurisdiction of the Car Department. Other work, such as invoices and making payment for the sand, is handled by the Material Department.

On December 22 and 23, 1965, work of unloading and stock piling a car of sand in Building CD-73 was required. In lieu of using Material Department

employees to perform that work as has been the custom and practice throughout the years, Car Department employees Walters, Kackowski, Russell and McGiven (Russell may or may not have also been a Car Department employee but was definitely not a Material Department employee) were used to unload and stockpile that car of sand.

Claim in behalf of employee Kloss and Winter was submitted by the Local Committee to District Material Manager, H. R. Marxen on January 24, 1966 and to Mr. E. F. Volkman, Manager of Materials on appeal on February 15, 1966 and was declined by each in turn.

The claim was appealed to Mr. S. W. Amour, Vice President-Labor Relations on June 1, 1966 and was declined by him in his letter dated July 21, 1966. In that letter Mr. Amour took the position that both claimants Kloss and Winter participated in the unloading and stock piling of the car of sand in question. That they did not do so is evidenced by statement from employee Winter dated November 10, 1966 (Employees' Exhibit "A") and employee Kloss dated December 1, 1966 (Employees' Exhibit "R").

However, during discussion of the claim in conference on February 10, 1967, Mr. Botzon of Mr. Amour's office advised that the Carrier had erred in its contention in that respect.

Further discussion of the claim during subsequent conference on March 31, 1967 failed to produce any settlement.

The time limits covering this claim were extended by mutual agreement for a period of 90 days, or until July 1, 1967.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant Paul B. Kloss is the regularly assigned occupant of Utility Storehelper Position No. 5237 in the Material Department at Milwaukee, Wisconsin which is assigned from 7:00 A. M. to 3:30 P. M. Monday through Friday with Saturday and Sunday rest days.

Claimant Terry L. Winter is the regularly assigned occupant of Utility Storehelper Position No. 5235 in the Material Department at Milwaukee, Wisconsin which is assigned from 7:00 A. M. to 3:30 P. M. Monday through Friday with Saturday and Sunday rest days.

Carrier orders from three (3) to five (5) carloads of sand per year for the use of Carmen, employees within the scope of the Brotherhood Railway Carmen of America Agreement, when sandblasting off old paint on cars prior to repainting them. This sandblasting work is performed by Carmen in Building CD-73, commonly referred to as the Sand House or Sand Blast Shed, which is located within the Milwaukee Shops area in Milwaukee, Wisconsin.

One (1) such carload of sand, i.e., Car UP 108806, was received by Carrier on December 22, 1965 and in accordance with past practice the sand contained therein was jointly unloaded and stockpiled in Building CD-73 on December 22, and 23, 1965 by Material Department employees within the scope of the Clerks Agreement, i.e., employee V. Riordan, Utility Storehelper, and Car Department employees, i.e., employees outside the scope of the Clerks Agreement.

The instant claim involves the work of "stockpiling sand in Building CD-73" at Milwaukee, Wisconsin which, by the claim they have here presented,

the employees are contending is work exclusive to Material Department employees within the scope of the Clerks Agreement, but which, in fact, is not work exclusive to Material Department employees within the scope of the Clerks Agreement as the Carrier will establish in its "Position."

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice President- Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of July 21, 1966Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. Hopper under date of April 3, 1967Carrier's Exhibit "B"

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim arose among Material Division employees in Seniority District No. 118 at the Milwaukee, Wisconsin Shops when on December 22 and 23, 1965 Car Department employees were used to unload and stock pile sand in Building CD-73 from UP Car No. 108806. The sand in UP Car No. 108806 was for use in sand-blasting operations by Car Department employees.

Petitioner argues that work such as handling material and scrap, stock piling, shipping, loading, sorting and billing thereof is recognized as Stores Department work and therefore, the Scope Rule of the controlling Agreement was violated when the work of unloading sand was performed on December 22 and 23, 1965 by Car Department employees.

Carrier responded that on the date of the instant claim, i.e., December 22 and 23, 1965 when Car Department employees participated in the unloading and stock piling of sand in Building CD-73 at Milwaukee there occurred no violation of the Clerks' Agreement as they have conclusively shown that such work is not within the Scope of the Clerks' Agreement but instead is work that has always been performed by Car Department employees.

From the evidence of the record, we must conclude that the work of stock piling sand for use in Car Department operations is work of Car Department employees and not work of Material Department employees.

Third Party Notice of the pendency of this dispute was given to the Brotherhood of Railway Carmen of the United States and Canada in accordance with the Supreme Court Decision in Transportation-Communication Employees' Union vs. Union Pacific Railroad Company 385 U.S. 157 1966 and the requirements of that Decision were met.

Accordingly, we 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.