

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19862
Docket Number CL-20014

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7265)
that:

(1) Carrier violated the Clerks' Agreement when it abolished warehouse clerical positions at Shreveport, Louisiana, effective February 6, 1969, subsequently leased portions of its warehouse facilities, April 1, 1969, to Geo. T. Cook Company and caused, by contract and sub-contract, employees of Geo. T. Cook Company to load, transload, cooper and re-cooper freight for the railroad at such warehouse facilities. Carrier also violated the Clerks' Agreement when it caused or permitted employees of Kansas City Southern Transport Company, not covered by the Clerks' Agreement, to load and transload freight at Carrier's warehouse, Shreveport, Louisiana, subsequent to abolishment of clerical positions February 6, 1969.

(2) Carrier shall compensate Claimants Wayne Varnado, Warehouse Foreman-Caller and Charlie Brackin, Caller-Trucker, Shreveport, Louisiana, as follows:

(a) For sixteen (16) hours on April 25, 1969 at penalty rate of \$27.50 per day and \$22.76 per day (rate of Warehouse Foreman and Caller-Trucker respectively), and twelve (12) hours at penalty rate, for each claimant, on April 26, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport, contracted out and employees of Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - paper from KCS 104833 into KCS 104205
2. Contents - paper from KCS 104396 into KCS 105473
3. Contents - paper from KCS 2441 into KCS 103900
4. Contents - rubber from UP 165584 into KCS 104515.

(b) For sixteen (16) hours at penalty rate of \$27.50 per day and \$22.76 per day (rate of Warehouse Foreman and Caller-Trucker respectively), for each of the following dates; May 1, 2, 3, 5, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport, contracted out and employees of Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - wood pulp from AT-SF 21005 into RI 21135
2. Contents - pulpboard from AT-SF 142587 into B&O 470750
3. Contents - petr. oil from KCS 2536 into KCS 2490
4. Contents - petr. oil from KCS 2537 into KCS 2549
5. Contents - twine from AT-SF 14815 into KCS 103446.

(c) For twelve (12) hours at penalty rate of \$27.50 per day and \$22.76 per day (rate of Warehouse Foreman and Caller-Trucker respectively), for each May 29, 1969 and June 4, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport, contracted out and employees of Geo. T. Cook Company used to transfer contents or load contents of rail cars at the warehouse facilities as follows:

1. Contents - waste paper loaded into SP 101467
2. Contents - beer from RI 16110 into KCS 14500.

(d) For four (4) hours thirty (30) minutes at penalty rate of \$27.50 per day and \$22.76 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on June 12, 1969, account employees of Kansas City Southern Transport, not covered by the Clerks' Agreement, used to transfer contents of trailer at the warehouse facilities as follows:

1. Contents - 714 ctns nuts and bolts from VTRZ - 20-1445 into KCSZ - 20-4027.

(e) For eight (8) hours at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on July 11, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport, contracted out and employees of Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - paper from SP 129774 into AT-SF 276541
2. Contents - syn. rubber from KCS 121461 into KCS 2035.

(f) For four (4) hours thirty (30) minutes at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on July 24, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport, contracted out and employees of Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - plywood from MILW 15773 into SP 215018.

(g) For sixteen (16) hours at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on August 11, 12, 1969, account employees of Kansas City Southern Transport, not covered by the Clerks' Agreement, used to transfer contents of trailer at the warehouse facilities as follows:

1. Contents - can goods - coca cola from KCSZ 204063 into B&OZ 200610.

(h) For eight (8) hours at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on September 19, 20, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport contracted out and employees (Smith Brothers) under sub-contract with Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - candy from HNZX 5763 into WFCX 8591.
2. Contents - fruit juice from SAL 593552 into SFRC 1157.
3. Contents - fruit juice from SCL 490494 into PFE 454220.

(i) For five (5) hours at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on October 10, 1969, account employees of Kansas City Southern Transport, not covered by the Clerks' Agreement, used to load (80) four wheel dollies, formally used by the abolished clerical positions, at the warehouse facilities as follows:

1. Contents - (80) four wheel carts loaded into KCS 40007.

(j) For eight (8) hours at penalty rate of \$28.33 per day and \$23.44 per day (rate of Warehouse Foreman and Caller-Trucker respectively), on October 13, 14, 1969, account warehouse work traditionally and historically performed by clerical employees at Shreveport contracted out and employees (Smith Brothers) under sub-contract with Geo. T. Cook Company used to transfer contents of rail cars at the warehouse facilities as follows:

1. Contents - petr. lube oil from KCS 1578 into KCS 1592.
2. Contents - petr. lube oil from KCS 2344 into KCS 1554.

OPINION OF BOARD: On January 30, 1969 the Carrier abolished its eight-man clerical force at its Shreveport Warehouse, Shreveport, La., and reestablished two clerical positions. On April 1, 1969, the Carrier leased a portion of its Warehouse facility to George T. Cook Company which thereafter performed work at that location for Carrier. The claim is that the work performed by Cook was among the assigned duties of the abolished clerical positions and that, by not assigning such work to the occupants of the two remaining clerical positions, the Carrier violated Rule 49(b) which reads as follows:

"(b) Where the duties of a particular position materially decrease in volume, justifying abolishing a position, the remaining duties will be distributed among remaining positions doing comparably rated classes of work."

The vast majority of the work involved in the dispute concerns the work of transferring the contents of wrecked or bad order cars at the Shreveport Warehouse; however, one or more of the items of work concerns the work of loading or unloading trailers.

On the property the Carrier, *inter alia*, asserted that the disputed work had not been assigned to the abolished clerical positions. The specifics of Carrier's assertions are as follows:

".... the work of transferring the contents of wrecked or bad ordered cars has been customarily performed by car department employees, maintenance of way employees and contractors as well as clerical employees." (Carrier letter dated August 5, 1969)

"Historically, the transfer of commodities involved in derailments has been performed by a number of different people, such as sectionmen, elevator people, industries, evacuator companies, contractors, etc. The prime reason for the transfer of commodities involved in derailments is to protect the interests of the railroad company as best we can. Some times this work is performed on the ground; in other cases it is performed at points where industries equipped to handle particular commodities are available in the area, or by contractors to recover and reload the commodity. To the best of my knowledge, clerks have never been used to perform these services. If employees were used, it was most generally sectionmen or Car Department employees, depending upon the urgency and location of the derailment. In this particular case, this involved the transfer of commodities from cars involved in a derailment near Baton Rouge, Louisiana. Cars were moved to Shreveport and the loads were transferred into other cars under contract by George T. Cook Company using property that was railroad owned but leased to George T. Cook Company.

* * * * *

"The facts are clear that such duties have not been performed by our clerical forces exclusively -- in fact, our clerical forces have performed very little of this work in the past. I am unaware of whom such contracting company may have in its employ and we have no jurisdiction over who the G. T. Cook Company may employ." (Carrier letter dated November 21, 1969.)

Carrier also asserted on the property that the work of loading and unloading trailers is commonly performed by transport people and that it knew of no arrangement where this work "is or ever has been" assigned to the Warehouse employees. In the Answer to the Employees Submission, the Carrier further stated that:

"The Carrier complied with the terms of Rule 49(b) by reducing the force at the freight house when the handling of less than carload freight shipments was reduced to a mere trickle. The small amount of work remaining was distributed among the two remaining jobs, i.e., work commonly performed by freight house forces continued to be performed under the Clerks' contract. None of this work was subcontracted, and the Employees' contention in this regard is erroneous and contrary to the facts."

The Carrier does not dispute that the work catalogued in the claim was performed by the Cook Company. However, and notwithstanding the somewhat self-contradictory nature of Carrier's assertions, the record shows that Carrier entered a positive denial that the disputed work was assigned to the abolished positions. Thus, our first task is to determine the fact of whether such work was assigned to the clerical force at Shreveport Warehouse immediately prior to Carrier's reduction of that force on January 30, 1969. The evidence cited in Petitioner's Submission regarding this fact consists of a Carrier "Message" sheet dated March 16, 1967, and a Carrier Report of cars transferred at Shreveport dated May 16, 1967. These documents, which are signed by the then Supervisor of the Shreveport clerical force, show on their face that on March 21, 1967, four men worked eight hours to transfer bags of fertilizer from a bad order car to another car at the Shreveport freight house. We have analyzed this documentary evidence closely, but conclude that it is insufficient to establish the fact of assignment of the disputed work to the abolished positions. First, the documents do not show the identity of the four men who performed the work, and hence, the documents afford no basis for concluding that the men were clerical employees at Shreveport Warehouse.

Next, the documents merely record that the Shreveport Supervisor received instructions(1) that a transfer was to be made; and (2) that he thereafter reported that the transfer had been made. The Supervisor's signature on documents of this nature has no tendency to show that clerical forces actually performed the transfer work. Additionally, even if the documents did not present these deficiencies, they could be given little weight because their dates

are so remote in time from the date of the reduction of the Shreveport clerical force. (March and May of 1967 as compared to January of 1969.) Furthermore although the Petitioner's Submission refers to the documents as evidence of the fact of assignment of the disputed work to the abolished positions, the Organization offered the documents, and others, on the property to show that the property leased by Carrier to Cook Company was still "operated and maintained" for Carrier. (June 20, 1972 letter of Organization) This change in the evidentiary purpose of the documents has no bearing on our assessment of the documents' evidentiary value. Nonetheless, we consider the changed purpose noteworthy in view of our conclusion that the documents do not constitute sufficient evidence to prove the fact in issue here, namely, that the work catalogued in the claim was assigned to the Shreveport clerical forces immediately prior to the January 30, 1969 reduction in force.

In view of the foregoing we conclude that the Petitioner has not met its burden to prove that the disputed work was assigned to the abolished clerical positions and we shall therefore dismiss 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 Claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.