

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) The Carrier violated the Clerks' Agreement on Tuesday night, February 16, 1954, Sunday, February 21, 1954, and Sunday, September 5, 1954, when it failed to call the regular assigned clerical employees to perform duties in connection with the preparation of Billing Repair Cards at the "B" Yard Repair tracks at E. St. Louis, Illinois.

(b) L. L. Opperman be compensated two hours' pay at punitive rate on Tuesday, February 16, and Sunday, February 21, 1954. Also that he be compensated in accordance with existing Agreement rules on all subsequent days that he is denied the right to perform all work in connection with the preparation of billing repair cards six days per week, Tuesday through Sunday.

(c) R. G. Butts be compensated seven hours and thirty minutes' pay at the penalty rate on Sunday, September 5, 1954. Also that he be compensated in accordance with existing Agreement rules on all Mondays subsequent to September 5, 1954, that he is denied the right to perform all work in connection with the preparation of billing repair cards on each Monday of his work week.

OPINION: Facts necessary to decision are as follows:

The clerical force employed in the Mechanical Department at East St. Louis, Illinois, are Record Writer Opperman and Clerk Butts. Upon different occasions carmen were called to make emergency repairs to loaded freight cars.

In addition to making the repairs the carmen made memoranda indicating materials used, which memorandum was given to Opperman the next day and from which he prepared billing repair cards.

It is the position of the Employees that the Carrier violated rules of the agreement when it denied Claimants the right to perform the work assigned to their positions and assigned such work to parties having no rights under the Clerks' Agreement.

Employees rely on Awards 360, 1300, 1647, and 6284 where the principle is announced that work of a class covered by an agreement belongs to those for whose benefit the contract was made; and Award 6887 where it was held that where overtime work is to be performed the Carrier must assign such work to employees having seniority rights to perform the same.

Carrier states that it has 84 locations where carmen make repairs to freight

cars, and that the practice is for carmen or foremen to write billing repair cards to cover the repairs they make, except where the volume of such work is such as to warrant the assignment of a record writer to do it; that memorandum showing repairs made to each car was prepared by the carmen and given to the record writer from which the billing repair cards were written; and of the 84 locations, only in 19 locations are record writers used; in the other 65 locations the cards are written by carmen.

It is also claimed that at points where record writers are regularly employed to write billing repair cards, it is not the practice to call record writers out on rest days or holidays unless there are sufficient carmen called and repair work performed to warrant doing so.

It appears that repairs made by carmen are exclusive to that craft. Rule 137 provides, "When necessary to repair or inspect cars on the road or away from the shops, carmen with sufficient help will be sent out to perform such work if it is necessary."

It also appears that it has been the practice that the writing of billing repair cards is not exclusive to the existing agreement, and that the parties to the agreement have acquiesced in permitting carmen to write such cards on rest days or holidays except in cases where more than four carmen are working on repairing foreign cars, and that if more than four men are so used, then a clerk is assigned to the job.

It clearly appears that the parties to the agreement have by usage placed this construction upon such work. It is now too late to repudiate such an understanding. We also hold that the parties to the agreement have by their actions indicated that the writing of billing repair cards for repairs to foreign line cars is incidental to the work required of carmen.

FINDINGS: The Special Board of Adjustment No. 170, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act;

That the Special Board of Adjustment has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.

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/s/ Edward M. Sharpe
Edward M. Sharpe -- Chairman

A. B. Simmons -- Employee Member

/s/ E. H. Hallmann
E. H. Hallmann -- Carrier Member

Chicago, Illinois
February 21, 1957

DISSENT TO AWARD NO. 2, DOCKET NO. CL-7643

The error of this Award arises primarily from the opinion of the Board in reaching the following conclusions:

1. The Employees have acquiesced in permitting carmen to write billing repair cards on rest days or holidays except in cases where more than four carmen are working on repairing foreign cars.
2. That the parties to the agreement have, by their actions, indicated that the writing of billing repair cards for repairs to foreign line cars is incidental to the work required of carmen.

The undersigned believes this to be an erroneous premise and that the majority opinion of the Board is contrary to the actual facts in the instant case. The conclusion reached by the Board (1) that record writers or clerks would not be called to write billing repair cards on rest days or holidays unless more than four carmen were worked, is without factual basis as it applied only to a settlement of a claim between a Master Mechanic and a Local Chairman at a certain location on the Chicago Terminal Division, and it did not apply on a system-wide basis. Neither did the signatory parties acquiesce in or agree to such an understanding.

The conclusion of the Board (2) that the parties to the agreement have, by their actions, indicated that the writing of billing repair cards for repairs to foreign line cars is incidental to the work required of carmen is also without factual

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basis. In the case at East St. Louis, prior to the date of the instant claim, all work in connection with the making and preparation of billing repair cards was work exclusive to the clerks, and had never been considered as incidental to the work required of carmen, nor had it ever been performed by carmen prior to the date of the instant claim.

The undersigned holds that there is nothing in the Docket to support such conclusions, as the facts clearly show that work in connection with the making of billing repair cards had never been considered as incidental to the work required of carmen at locations on the Illinois Central where clerks and record writers are employed to perform this phase of work.

The undersigned feels that the Board disregarded the principle established in Award 6887 covering a claim at Centralia, Illinois, between the same parties. The claim in question covered the weighing of revenue cars by other than qualified clerks (weighmasters). Referee Rader, in sustaining the position of the Employes, said the following:

"The record shows that other than clerks have weighed cars at Centralia, Illinois; also that such is the practice throughout the railroad industry and likewise on Carrier's System. However, the question presented for consideration here is the weighing of revenue cars at Centralia, Illinois on a scale, designated as track scale located approximately 950 ft. north of the passenger depot.

"Weighmasters are not listed in Scope Rule 1, however, on this record it is shown that the custom and practice of years standing had been on this scale to have revenue cars weighed by clerks qualified as weighmasters and that it has become a traditional practice. Therefore, it is concluded that the weighing of revenue cars at the scale designated above has become an integral part of clerk's duties and has been so recognized by the parties."

/s/ A. B. Simmons
A. B. Simmons -- Employe Member

Dated at Chicago, Illinois
February 26, 1957