

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 the Carrier violated the Agreement between the parties effective June 23, 1922, as subsequently revised; also the Memorandum of Agreement dated October 10, 1940, when:

(A) On February 3rd, March 3rd, March 10th, March 11th, December 24th, 1954, - - January 12th, February 10th, February 16th, February 18th, March 2nd, March 4th, March 9th, March 16th, March 17th, March 24th, March 28th, April 8th, April 13th and April 14th, 1955, the Carrier required E. Hall, J. Humphries, S. Avant, E. Griffin, R. H. Coleman, C. Williams, B. Bracy, H. L. Tursty, J. C. Simpson and G. S. Owens, employed as Freight Handlers at the Carrier's freight handling facilities at South Water Street, Chicago, Illinois, to suspend work on their regular positions, and go to Markham Yard to help install and/or remove heaters in cars loaded with perishable freight, and failed and refused to call Cecil Simpson, employed as Heaterman - Truck Operator to perform that class of work, and

(B) That the Carrier shall now be required to pay Messrs. E. Hall, J. Humphries, S. Avant, E. Griffin, R. H. Coleman, C. Williams, B. Bracy, H. L. Tursty, J. C. Simpson and G. S. Owens, in addition to compensation already paid, an additional sum at pro rata rate of their respective positions, for the number of hours that each of said claimants were required to suspend work on their regular positions as Freight Handlers on the dates enumerated above, and

(C) That the Carrier shall now be required to pay Mr. Cecil Simpson for additional sixty-two (62) hours at penalty rate of his position of Heaterman - Truck Operator, (\$13.86 per day) account of Carrier's failure and refusal to call Mr. Simpson to assist with installation and/or removal of heaters on the dates enumerated above.

NOTE: Actual monetary consideration involved in Item B hereof, to be determined by joint check of Carrier's payrolls, time book records, etc.

OPINION: Prior to 1940, freight and most passenger trains were handled by steam driven locomotives. Such trains arriving from the south and west which had loadings destined for points in the downtown area in Chicago were run directly to the vicinity of the Carrier's South Water Street Freight Station. Trains were also operated out of Congress Street to southern and western points on the lines of the Carrier.

In 1940 the City of Chicago passed a smoke ordinance that necessitated minimizing the operation of steam locomotives within the city limits. As a consequence, freight trains which formerly operated directly into the Lower Yard in downtown Chicago were stopped at outlying points. Freight trains from the south were run into Markham Yard, and freight trains from the west into Hawthorne Yard on the west side of the city, from which yards cars were moved downtown by diesel transfer locomotives.

As a result of this situation the performance of perishable service increased in both the above yards and decreased at Congress Street Lower Yard and South Water Street Freight House. In order to properly handle the increases and decreases in the yards, an agreement was entered into in September, 1940, resulting in the abolishment of positions of perishable inspector at South Water Street Freight House and established at Markham Yard three positions of perishable inspector and four additional yard clerks, as well as various other clerical positions. After forces were increased at Markham, perishable protective service necessary at that point was handled in the following manner:

"Perishable inspectors exercised general supervision over perishable services, kept records, and assisted in manual work connected with ventilating and heating to the extent of their available time.

"Contractors iced cars.

"Section laborers de-iced cars.

"Fruit company representatives adjusted vents and plugs on cars of bananas only.

"Yard clerks on duty manipulated vents and plugs on other perishables.

"During the winter heater season laborers from the South Water Street Freight House installed and removed heaters as result of request of Organization and verbal understanding reached as to their use.

"During the months outside the regular heater season, yard clerks at Markham installed or removed heaters.

"With the approach of the spring season in 1942, the fruit company insisted that the responsibility for adjusting vents and plugs on cars of bananas was the railroad's and not theirs. The resident fruit company representative at Markham Yard discontinued performing this service, and since then it has been performed by perishable inspectors and/or yard clerks on duty; and in the event additional help is needed, by clerks off duty on a call basis."

Reference has been made to an alleged agreement having been made in October, 1940. The agreement contains the following:

"It is agreed that the installing, removing and servicing of heaters at Markham Yard during the heater season will be handled in the following manner:

"Labor for installing, removing and servicing heaters at Markham will be obtained from employees on the South Water Street Inbound Freight House roster. When this roster is exhausted, labor will be obtained from the South Water Street Outbound Freight House roster.

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"In the event extra laborers are not available from the two rosters mentioned herein above and for the reasons mentioned herein above, other men may be called and used, other than employees on two rosters above referred to.

"The men from South Water Street performing this work at Markham will be continued to be carried on the South Water Street rosters; however, while working at Markham they will be under the jurisdiction of the Terminal Freight Agent."

This agreement was signed by representatives of Brotherhood of Railway and Steamship Clerks and of the Carrier, but not by the Manager of Personnel. In February, 1956, a joint statement was issued by C. A. Casberg, former assistant general chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and J. F. Riordan, former agent at South Water Street, a part of which reads as follows:

"As a result of this change, an agreement was consummated effective September 20, 1940, with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, transferring perishable inspectors from the South Water Street seniority district to the seniority roster of the Terminal Agent at Markham Yard. There was another similar agreement considered to cover permitting employees on the South Water Street freight house roster to go to Markham and perform the work they had previously performed in the Congress Street and South Water Street area and the same work that had previously been performed by employees of other crafts at Markham. This agreement was never approved by the Manager of Personnel, we understand because he considered certain phases thereof were in conflict with the rules agreement and that the work in question was not exclusive to the scope of the agreement with the Clerks' organization. Nevertheless, the following memorandum as to general intent and agreed local application was reached in conference on January 25, 1941,

attended by Mr. W. M. Hale, Station Supervisor, Mr. F. E. McCarthy, General Chairman, Mr. C. A. Casberg, Assistant General Chairman, and Dan Madden, Local Chairman:

"1. Local Chairman Madden will supply list of names of experienced heater men available for this work.

"2. Men sent from South Water Street to Markham will receive a day's pay at the rate they would have received had they worked at South Water Street; that is, if a caller does heater work he will receive caller's rate, etc.

"3. No penalty time will be claimed if employe works at both South Water Street and Markham during same day.

"4. Starting time rule will be waived by employes sent to do heater work."

It does not appear to have been the intent of the parties to establish a group of positions which would be available on each shift during the season and large enough to handle any and all services required at any given time; rather, it appears to have been to give employes of South Water Street more work than they otherwise would have had. In this case the parties were suddenly faced with an unusual situation due to the enactment of the so-called "Smoke Ordinance" of the City of Chicago. In attempting to find a solution to this problem, the parties entered into an agreement, heretofore mentioned. The parties abided by this agreement for approximately fifteen years without objection from either of the parties involved. We are of the opinion that where parties find a solution to a problem and abide by that solution until the problem no longer exists, it is now too late to object to what they voluntarily entered into.

FINDINGS: The Special Board of Adjustment No. 170 after giving to 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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 170

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

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

A. E. Simmons -- Employe Member

Chicago, Illinois
January 17, 1958