Award No. 3
Docket No. CL-7628

SPECIAL BOARD OF ADJUSTMENT NO. 170

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

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

1. The Carrier violated and continues to violate the Clerks' Agreement when it removed certain work from the scope of said Agreement and permitted such work to be performed by an outside concern, namely, Texas Transport and Terminal Company at the Third Street Wharf, New Orleans, Louisiana, effective April 15, 1948.

2. River Front Clerk's rate of $9.08 per day be paid to the senior available qualified extra clerk who was denied the right to work on April 15, 1948.

3. River Front Clerk's rate of $9.08 per day be paid to the senior available qualified extra clerk who is denied the right to work on dates subsequent to April 15, 1948, and employes of the Texas Transport and Terminal Company are permitted to perform duties assigned to the Carrier's employes prior to that date, until the condition is corrected.

OPINION: The facts necessary to a decision in the within case are as follows:

There are about 100 piers, wharves or docks covering the Port of New Orleans. Public wharves are owned by the State of Louisiana. Third Street Wharf is owned by the State of Louisiana and operated by a Dock Board and served exclusively by the Public Belt Railroad of New Orleans. The Carrier does not use its own employes to load and unload cars at Third Street Wharf. Such labor is performed by unions of the International Longshoremen's Association under hire to stevedoring companies. At the Third Street Wharf, the Texas Transport and Terminal Company is responsible for loading and unloading cars received from or destined for the Illinois Central Railroad in interchange. Acting as steamship agents, the Texas Terminal and Transport Company receives and takes custody of commodities unloaded from ships onto the Third Street Wharf. Freight shipments do not pass through the Carrier's freight house at New Orleans. When freight is unloaded on the dock, it is moved by the Public Belt Railroad to the Carrier at Stuyvesant Docks and moved from there to Carrier's Mays Yard where it is dispatched on the road haul. The cars are sealed at the Third Street Wharf and generally are not opened until received by the consignee. Carrier does not require its own employes to make a check to verify the loading contractor's check.

It is the position of the Employes that the seniority and related rules of the Clerks' Agreement were violated when the Carrier permitted the Texas Transport and Terminal Company to perform certain duties rightfully belonging to the Clerks, such as checking the unloading of cars of export freight from its line onto the wharves and checking the loading of cars of import freight to be shipped over the lines.

Employes rely on Award No. 757 and other awards in harmony therewith to the effect that the Carrier may not let out to others the performance of work of a type embraced within one of its collective agreements.

It is the position of the Carrier that there is no rule in the current agreement which requires the Carrier to check any merchandise turned over to it by shipper, contractor or drayman.

Carrier relies upon Award No. 5822 where it is said:

"On April 14, 1949, the Carrier involved in this case made certain changes in its method of checking LCL freight shipments received from Sears Roebuck & Co. and Montgomery Ward and Company at the Kansas City Freight Terminal. Prior to this date when the contract hauler arrived at the Carrier's freight platform with such shipments which had been picked up at Sears, Roebuck and Company and Montgomery Ward and Company a careful and detail check was made of the shipments by Carrier's freight house employes. These Companies protested the slow movement of their freight out of the Kansas City Terminal. Consequently Carrier made a careful study of the situation and decided that the service could be materially speeded up by eliminating this check by the freight house employes when the contract haulers arrived at the Carrier's freight platform. Therefore on April 14, 1949 the indicated change was made. According to the record no other changes were made in the shipping procedure.

"The Petitioner protests this action by the Carrier as being in violation of the Scope Rule of the relevant agreement. It is claimed that the Carrier now accepts the check made on such shipments by the employes of the contract hauler, thus removing work from the agreement with the Clerks' Organization, and thereby arranging for its performance by employes who have no seniority rights under the Clerks' Agreement.

"In the record there is much argument with respect to whether the Carrier eliminated the checking operation in question, or whether that function was merely transferred to employes of the trucking firm who hold no seniority rights under the agreement. Despite the extensive argument on this point it seems clear from the record that the operation in question was eliminated and was not transferred. It appears that employes of the trucking firm make the same checks at the loading docks of Sears Roebuck and Montgomery Ward which they have always made--that these are made at the direction of the trucking firm and for its own use and protection. The record does not substantiate the claim that this check is taken over by the Carrier and made a substitute for the checks previously made by its own employes.

"The record shows further that the Carrier has not reduced the number of positions at the Kansas City Freight House as a result of the elimination of the checking procedure in question.

"Under the facts here involved it must be conceded that Petitioner's claim is lacking in merit. The Carrier does not appear to have violated the Scope Rule of the Agreement with the Organization. There is nothing to prevent the Carrier from assuming, if it wishes, the risks involved by eliminating the previous detail check upon LCL freight shipments received from Sears Roebuck and Montgomery Ward."

In the present case, the merchandise imported at New Orleans does not pass through the Illinois Central freight house. The cars remain sealed and unopened from the time they are first received on Carrier's tracks at Stuyvesant Docks until opened by the consignee at destination. In our opinion there was no violation of the agreement. The Carrier has the privilege of assuming the risk of accepting the check of freight made by others who are required to make such check before billing Carrier for the freight handled.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

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

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

A. B. Simmons -- Employe Member

Chicago, Illinois
February 21, 1957