

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) Carrier violated the rules of the Clerks' Agreement at Memphis, Tennessee, when on November 1, 1955, without negotiation or agreement it cancelled the long-established practice of furnishing to its employes working at Johnston Yard, free transportation from South Yard to the locations of their employment at Johnston Yard.

(b) That the long-established practice of furnishing free transportation to its employes from South Yard to Johnston Yard be restored.

(c) That employes named herein be compensated for expenses incurred in securing transportation in substitution for free transportation formerly provided by the Carrier.

H. S. Mills	L. M. Janes	W. A. Sloan	F. C. Hayden
W. E. Foster	I. E. Abbott	N. S. Dahl	J. F. Kenney, Jr.
W. B. McClintock	N. G. Nuckolls	C. W. Spear	M. T. Power
F. L. Younger	R. F. Taylor	N. R. Whitaker	E. W. Miller
J. A. Ward	H. B. Abernathy	C. J. Reneau	B. J. Edwards
E. E. Ives	O. E. Pirtle	G. A. Lohnes	T. H. Emerson, Jr.
E. M. Carr	T. B. Trotter	A. A. Ashworth	A. M. Dunlap
G. C. Jones	H. D. Hammond	R. E. Sanders, Jr.	I. B. Hall
J. B. Nichel	R. Hill	L. I. Todd	C. T. Tharpe
W. L. Doyle	E. W. Rose	A. Friedman	C. E. Birman
T. E. Fauver	D. L. Mann	J. F. Archer	K. L. Parks
W. S. Deaton	J. P. Park	John Horton	H. Gaines
J. D. Rodgers	V. T. Crook	K. Mabry	R. L. Curry
W. A. Owen	A. S. Caylor	Humphrey Thomas, Jr.	H. Thomas
R. T. Strange	J. E. Trusler	Hill Wilson, Jr.	A. Scruggs
J. B. Mills	L. M. Malone	L. Blaylock	J. Perkins
A. L. Brown	I. L. Richards	U. Green	J. Tables
C. E. McKnight	W. E. Merritt	Robert Berkley	W. Steger
W. L. Sawner	J. Evensky	L. Anderson	W. Lee
D. E. Post	R. C. Childress	L. C. Reed	M. Sims
V. L. Agy	R. L. Turner	Joe Smith	C. Wallace
E. Y. Tucker	E. M. Groseclose	P. J. Watson	M. Davis
L. L. Steward	J. T. Evans	J. D. Taylor	J. L. Guest
J. W. Oswalt	W. K. Rowe	S. A. Cole	B. Jones
J. C. Chidester, Jr.	D. S. Trainer	Luther Lackland	C. W. Wilson
J. W. O'Linger	J. M. Hobbs	R. C. McCormick	W. W. Wood

E. C. Maupin	R. D. Moore	C. H. Stroh	E. Beteet
W. A. Murphy	C. L. Perry	W. R. Maggert	A. Butcher
C. W. Milton	K. E. Nolan	P. C. Lamb	B. Dean
L. H. Bruch	H. J. Richardson	W. J. Halloway	J. W. Posey
V. S. Larkin	W. C. Epperson	W. L. Johnson	C. H. Woodard
J. A. Taylor	J. T. Hutton	J. M. Berry, Jr.	G. Benford
B. M. Johnson	A. R. Keenum	J. W. Surprise	P. L. Gurley
A. G. Maclin	C. H. Hutchison	E. G. Hillhouse	H. Harris
J. E. Parker	L. W. Lawrence	C. N. Brewer	A. M. Wright
B. H. Hildreth	C. M. Murdaugh	S. I. Teas	F. R. Eubanks
G. D. Brown	H. W. Rousseaux	O. L. Head	C. L. Early, Jr.
E. Rawes	C. B. Clark	C. W. Chism	W. V. Rutherford
N. H. Groseclose	L. N. Dye	F. W. Wood	J. T. McGee, Sr.
M. C. Hines	B. R. Ary	R. N. Ingram	E. T. Dandridge
O. L. Schmitz	B. S. Taylor	L. M. Addington	C. L. Clark
M. O. Hart	John Gillon	E. T. Passene	I. Baskin
M. W. Abbott	James Britton	A. M. Wright	O. Hunter
E. M. Pegues	Charlie Wright	F. R. Eubanks	W. W. Trout
D. R. Wade	C. F. Hartness, Jr.	W. B. Rutherford	E. Peck, Jr.
B. J. Walters	Herman Maddox	W. G. Stoddard	G. Logwood
M. L. Sanford	Robert Mitchell	N. E. Terrell	N. E. Terrell
B. M. Manuel	Berry W. Martin	W. W. Wood	S. V. Catanzaro
J. A. Ganong, Jr.	F. Campbell	L. R. Bryan	L. E. May
R. M. Hardy	Nathaniel Jones	S. V. Catanzaro	C. Brown
C. O. Gross	Alfonso Biles	D. D. McGee	W. McGill
M. P. Murdaugh	Will Williams	J. H. Boswell	U. Eason, Jr.
V. M. Clark	L. Stevenson	J. Sturgist	L. Banks
H. L. Rogers	E. Mitchell	S. J. Blanton	W. C. Stoddard
H. F. Holmes	Cleveland H. Cox	J. Thomas	H. Milan
W. T. Carter	George Scott	F. Douglas	O. Sims
R. N. Person	J. Douglas	S. Riley	P. Sipland
E. L. Crockett	Louis Williams	O. M. Estes	M. W. Mason
C. R. Ferguson	Brooks Hale	F. Hunter	L. L. Gregg
J. H. Warren	Alver McClara	B. Ollie	W. J. Pratt
R. E. Lee	Lex Polk	G. Campbell	E. B. Hodge
W. R. Milam	Eddie Green	M. Hallman	H. P. Johnson
L. R. King	Douglas Young	S. Russell	J. Darling
A. Thomas	J. H. Reeves	C. W. Doyle	E. E. Harding
Rennie Sanders	J. H. Barnes	R. A. Pittsinger	W. J. B. Cooper
G. Molden	J. W. Goodman	H. S. Lowe	G. T. Gibson
J. Canada	B. B. Wheeler	J. W. McLean	J. A. Ford
Frank Maggitt	B. A. Turner	H. R. Grimmer	C. H. Edney
W. H. Harrison	V. D. Harris	Pauline Snell	J. R. Mayer
L. A. Young	J. B. Herriman	M. J. Betancourt	W. S. Nailling
J. Murray	H. F. Collins	P. A. McHugh	Robert Hollins

NOTE: Reparation to be determined by joint check of expenses incurred by each Claimant.

OPINION: Prior to 1904 Carrier's terminal facilities were located at South Yard, Memphis. Upon completion of its newly constructed terminal facilities at Johnston Yard, the majority of Carrier's yard operating personnel were moved to Johnston Yard. A train was placed in operation to transplant the employees to their new work location.

This service continued until July 8, 1932, when it was discontinued and again resumed on July 17, 1932. When the service was discontinued in 1932, a protest was entered, and on July 16, 1932, Carrier's Vice President conceded that a letter written May 22, 1914, by the General Manager to employee representatives of the train and engine service organizations was an agreement. The Carrier restored the service the following day. It also appears that the Carrier in 1955 renewed its efforts to substitute bus service for train service; however, no agreement was consummated to this effect. The Carrier discontinued operation of train service November 1, 1955.

It is the position of the Carrier that the Employees have failed to comply with the provisions of Article V of the August 21, 1954, Agreement, when, in presenting and handling this case on the property, they failed to name the specific claimants involved. Carrier relies upon Award No. 40, Special Board of Adjustment No. 170. There are other awards in harmony with the above award, but all such awards relate to remuneration for service performed. In the case at bar the claim is not for a money award but is in the nature of a mandamus for the continuation of a long established service. We do not think that Article V, above cited, is controlling in the case at bar.

It is the position of the Employees that where an agreement is negotiated or revised and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the agreement. Employees cite many awards in support of this claim including Award 2436 where it was held:

"Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself."

It is the position of the Carrier that free transportation may be granted or discontinued at the option of the Carrier. We note that the parties did not negotiate any rule into the agreement relating to free transportation of employees to and from their work location at Johnston Yard at the time the agreement was first negotiated or at any subsequent revisions. We also note that free transportation has been given to employees, with two exceptions, for approximately 50 years and was first granted as an inducement to employees to follow their work when their positions were removed from South Yard to Johnston Yard.

We note that there was no contract or agreement between the Carrier and the Clerks for the furnishing of train service to its employees. The services rendered were a gratuity and, as such, could be withdrawn at the option of the

Award No. 46
Docket No. CL-9003

Carrier. There was no violation of any rule, and hence no rule to interpret by this Board.

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 Employees involved in this dispute are respectively Carrier and Employees 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/ Edward M. Sharpe

Edward M. Sharpe - Chairman

//s/ E. H. Hallmann

E. H. Hallmann - Employee Member

R. W. Copeland - Carrier Member

Chicago, Illinois

June 17, 1958

(Date)