

ORG. FILE 28-5
CARRIER FILE 140-452-52
NRAB FILE CL-7544

AWARD NO. 1
CASE NO. 1

SPECIAL BOARD OF ADJUSTMENT NO. 174

PARTIES The Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
TO

DISPUTE The Atchison, Topeka and Santa Fe Railway Company

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

(a) Carrier violated the rules of the current Clerks' Agreement when it removed the work of placing material in the bins at Richmond Station from the scope and operation of the Clerks' Agreement by assigning and permitting employees not covered by the rules to perform such work; and,

(b) R. K. Nilsson, Storehelper, shall be paid three (3) hours at Storehelper rate for each day when such violation of Agreement rules occurs retroactive to April 1, 1953 and continuing until such violation is corrected.

FINDINGS: Special Board of Adjustment No. 174, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

For many years the Carrier has maintained at Richmond a storehouse and freight car repair facilities.

Prior to 1929 carman helpers called at the storehouse for materials as required and then delivered them to the Mechanical Department.

Effective with the placing of a new storehouse in service in 1929, which was some distance from the Mechanical Department, Store Department employees covered by the Clerks' Agreement, were thereafter exclusively utilized to deliver materials to the Mechanical Department, placing the materials along the repair tracks and in bins.

With a reduction in the amount of repair work as well as in the amount of repair parts required, on June 23, 1952 the Carrier established a Mechanical Department storeroom in the center of the Mechanical Department facilities under the supervision of a Mechanical Department Material Supervisor; and Clerks continued to deliver all working stock materials to the Mechanical Department, placing the smaller items in bins in the Mechanical Department storeroom and the bulkier items alongside the Mechanical Department shed. They also continued to prepare requisitions covering replenishments and to assemble materials for such replenishment.

Award No. 1

Case No. 1

At all times since 1929 when materials have been delivered from the Store Department to the Mechanical Department, they have been charged out to operating accounts and no longer carried in Store Department accounts. Upon delivery they ceased to be stores and became working stock, for which the Store Department had no further concern or responsibility, and came under the supervision of the Mechanical Department Material Supervisor which position was abolished December 24, 1951.

On July 1, 1952 Carmen initiated a claim that other than a carman helper was being improperly used as "stock keeper" in the new Mechanical Department storeroom. The claim embraced all the work of delivering materials from the Store Department to the Mechanical Department including the checking of materials and the preparation of requisitions for replacements. The Carrier declined this claim and the Carmen's Organization carried it to the Second Division of the National Railroad Adjustment Board.

The Second Division gave notice of the pendency of the claim and of the date of the hearing to the Clerks' Organization which declined to appear upon the ground that Clerks' rights are predicated solely upon their own agreement, upon the ground that the Railway Labor Act required referral of the dispute to the Third Division, upon the ground that the Second Division had no jurisdiction, and upon other grounds.

Meanwhile on April 1, 1953 the Carrier unilaterally transferred the work of placing material in the bins in the Mechanical Department from the Clerks to the Carmen but left all other aspects of the delivery undisturbed in the hands of the Clerks.

The claim which is before us, therefore, is addressed solely to the function of placing or distributing materials in the bins in the storeroom in the Mechanical Department.

It does not appear that the Third Division, where this dispute has been docketed since January 10, 1955, has given any notice of the pendency of this dispute to any third party.

On July 15, 1954 the Second Division issued its Award 1810 which found a violation of the Carmen's agreement to the limited extent of the placing of the materials in bins from June 23, 1952 to April 1, 1953 and otherwise denied the claim.

First. The Carrier contends that this Board has no authority to consider the merits of this dispute by reason of the failure of the Third Division to give third-party notice and by reason of Second Division Award 1810 which was preceded by the giving of third-party notice to the Clerks.

There are numerous conflicting Adjustment Board awards and court decisions on this subject. Award 8330 is not in point because all parties involved were within the jurisdiction of the Third Division.

This case is before us and we feel under obligation to consider and dispose of the merits. If we have exceeded our authority in doing so, appeal to higher authority than ours is open to anyone who may be so advised.

Second. While Carmen themselves secured their materials from the storehouse prior to 1929, since then Clerks have always delivered materials and placed them in Mechanical Department bins. Upon delivery the materials have always been Mechanical Department materials, not Store Department materials; and, until December 24, 1951, upon delivery the materials came under the supervision and control of a Mechanical Department Material Supervisor. In other words, there never has been a Store Department storehouse in this Mechanical Department where Clerks checked and ordered materials, and made requisitions and issued materials to Mechanical Department employes.

There is a difference between the kind of sorting and distributing into bins required for storehouse issuance and record-making purposes and that required for a stock of working materials under the control of a Material Supervisor. Under the practice the sorting and distribution of materials into bins has always been a matter of internal Mechanical Department housekeeping rather than an exclusive function of Clerks whose responsibility for the materials ceased once a delivery en masse was accomplished at the Mechanical Department.

In this view we are unable to conclude that the sorting and distribution of materials into Mechanical Department bins was such an integral part of the function of delivery as to constitute the exclusive work of Clerks.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ A. D. Stafford
Carrier Member

/s/ J. D. Bearden
Employee Member

Dated at Chicago, Illinois December 16, 1958