

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES: BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY



AWARD IN DOCKET NO. 18

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

(1) Carrier violated the Scope Rule and other Rules of the Clerks' Agreement when it contracted with the Railroad Perishable Inspection Agency to inspect damaged goods at the Great Atlantic & Pacific Tea Company warehouse at Fairmont, W. Va., and

(2) That unassigned employee James W. McKinney and any other person or persons who have been denied full use of their seniority account failure to establish a Group 1 position at the Fairmont Freight Office shall now be compensated for one day's pay each date beginning with August 5, 1954 and continuing until the contested work is returned to the scope and application of the Clerks' Agreement.

FINDINGS:

Prior to December 1, 1950, the inspection of perishable commodities delivered by the Carrier to the A&P Tea Company at Fairmont was performed by the incumbent of the Claim and Trace position. Thereafter a District Inspector of the Railway Perishable Inspection Agency made such inspection.

The employees claim that the Carrier violated the Scope Rule of the Agreement in "contracting out" the work of inspection.

There is no provision in the Scope Rule specifically describing the inspecting of perishables as being work subject to the Agreement. Generally speaking, in the absence of provisions in Scope Rule defining work as such it is recognized by Awards of Railway Labor Tribunals that such work as is traditionally and customarily performed by the classes of employees listed in the Scope Rule is covered by the Agreement. Here it is shown that at many points on the Carrier's system and for many years during which the Clerks' Agreement has been revised several times the work of inspecting perishables has been performed by employees of the R.P.I.A. It cannot, therefore, be said that the work of inspecting perishables has been customarily and traditionally performed by the classes of employees covered by the Clerks' Agreement. The fact that the employees made no protest against the practice cited by the Carrier despite several revisions of the Agreement would indicate that they did not regard such work as covered. The fact that in connection with the inspection of perishables the R.P.I.A. employee may have inspected canned goods under the facts as they appear here is not in our opinion a sufficient factor to warrant a finding that the Scope Rule was violated. Further, the failure to take any action for more than three years after the change was made at Fairmont while not conclusive

is a further indication along the same lines. Considering all these factors, it is apparent that there is no basis for a sustaining award.

AWARD

Claim (1), (2) denied.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

E. J. Hoffman
Employee Member

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
18th day of February, 1959.