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SPECIAL BOARD OF ADJUSTMENT NO. 167

AWARD NO. 13

Organization's File

Carrier's File

103-C-11

CL-46-55

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The Carrier violated terms of the current agreement, and continues to violate said Agreement, when it requires or permits contract draymen (employees of Rio Grande Motor Way) and other individuals holding no rights under our contract, to perform work coming under same at the freight warehouse, Pueblo, Colorado, i.e., checking, receiving, trucking, sorting and delivering freight,

"(2) That the senior qualified Group 1 employee, if any, be paid one day's pay at checker's rate for each day, commencing July 5, 1955, until violation is corrected.

"(3) On any day or days that an employee is not available under Item (2) above, then a regularly assigned Group 1 employee shall be paid three (3) hours at punitive rate for such violation.

"(4) That the senior qualified Group 2-3 employee, if any, be paid one day's pay at stowman's rate for each day, commencing July 5, 1955, until violation is corrected.

"(5) On any day or days that an employee is not available, under Item (4) above, then regularly assigned Group 2-3 employee shall be paid three (3) hours at punitive rate for said violation.

"NOTE: The individuals entitled to receive payment in each instance to be determined by joint check of the seniority roster and payrolls."

FINDINGS: This claim involves work asserted to have been performed by patrons and Motor Way draymen holding no rights under the contract; "i.e., checking, receiving, trucking, sorting and delivering freight," at the freight warehouse at Pueblo.

There is little dispute as to the wording of the applicable rule. Outsiders may not be permitted to truck or sort freight within the warehouse. They may receive or deliver it only upon the platform of the warehouse, or if there is no platform, on the floor in or at the door of the warehouse. They

may not check through the warehouse for short items nor make check of the items received or delivered in behalf of the Carrier.

When, after freight has been placed on the floor in or at the door of the warehouse, the outsider takes delivery of freight, it is then no longer in the custody and control of the clerks or the carrier and the method of removal from the warehouse is the concern of the outsider. Handling it further in the warehouse by him after he has received it at the doorway may be limited because of inconvenience but is not an infringement of the contract.

As in the argument in connection with Award 1647, the Organization sought to extend the purview of the claim to a denial of the right of anyone other than employees within the scope of the Agreement to go beyond the tail-gate of a truck delivering or picking up freight at the warehouse. However, as the referee there held, to uphold such a contention would necessitate injecting an implication into the agreement which cannot be found in its express terms.

There has been considerable argument as to the application of the phrase "in or at the door" but no factual situation involving that question has appeared in this claim and the board is only authorized to decide specific issues on facts submitted.

The Employees have submitted numerous statements of employees or outsiders in support of the claim. Many of them plainly are and all may be based on an understanding of the clerks' rights different from that which we must follow and all of them are explicitly denied. Even if accepted they are not sufficiently definite as to the times and extent of violations to make the basis of a sustaining award.

AWARD: Claim denied.

/s/ Mortimer Stone
Mortimer Stone
Chairman, Neutral Member

Wm. J. Donlon
Organization Member

/s/ D. L. Clavel
D. L. Clavel
Carrier Member