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AWARD NO. 39
NRAB DOCKET NO. CL-8573
CASE NO. 30
SSW FILE R-51-760
BRC FILE 11-10

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES) The Brotherhood of Railway and Steamship Clerks
TO)
DISPUTE) St. Louis Southwestern Railway Company

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

(1) That Carrier violated the Clerks' current Agreement on October 5, 1953, by requiring and/or permitting Southwestern Transportation Company employees to perform work at the Pine Bluff, Arkansas, Warehouse of the Carrier (Old House), rightfully within the scope of duties belonging to Cotton Belt employees.

(2) That all employees of the Warehouse and Freight Office of the Carrier at Pine Bluff, who suffered monetary loss on October 5, 1953, and subsequent dates, and all employees of the Carrier at Pine Bluff, regardless of location, who suffered monetary loss on October 5, 1953, and subsequent dates, be reimbursed for all loss suffered, until violation is corrected.

(3) That the senior assigned Carrier Warehouse employees, equivalent to the number of SWT employees who were required or permitted to perform work normally handled by Carrier's warehouse forces, be allowed compensation at overtime rate equaling the time (hours and minutes) of SWT employees spent in said work.

NOTE: Actual monetary consideration involved in this claim to be determined by joint check of payroll records, etc.

FINDINGS: This case involved the claim by the Brotherhood of Railway and Steamship Clerks that the clerical employees of the St. Louis Southwestern Railway Company at Pine Bluff, Arkansas, should have the exclusive right to the handling of certain freight on the platform of the station at Pine Bluff.

This claim specifically involves whether or not the clerical employees of the Railway Company or the employees of the Transportation Company have the right to truck freight in intertruck interchange. It is conceded that this is freight that has never come into possession of the Railway Company but is freight being handled by the Transportation Company that comes to the warehouse platform in one truck and is moved from that truck to another truck to go out without ever having come into the possession of the Railway Company.

Claimant contends that prior to October 5, 1953, the employees of the Railway Company had always made these transfers, although that is a disputed fact. There is no contract in evidence showing that the Railway Company had contractual rights to perform this service for the Transportation Company. As long as the

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freight remained in the possession of the Transportation Company and never came into the possession of the Railway Company, in theory, it was the privilege and right of the employees of the Transportation Company to handle that freight. The fact that it was handled on the platform of the railroad warehouse did not deny the Transportation Company the right to handle their own freight as long as they retained possession, even though it would probably involve some charge between the two companies for that service, but whether such existed or not we do not know as there is no evidence to show any charge for that service. Until the freight brought in on a truck is actually delivered to the possession of the Railroad Company the employees of the Railway Company have no contractual right to demand any performance in connection with that freight. Therefore, under all the facts in this case, we are unable to see that the employees of the Railroad Company had any right to the performance of this intertruck transfer which is the basis of claim here.

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member
(Dissent Attached)

/s/ L. C. Albert
L. C. Albert, Carrier Member

Tyler, Texas
April 29, 1957.

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EMPLOYEE MEMBER'S DISSENT TO AWARD NO. 39

The last paragraph of this Award contains the following:

"Claimant contends that prior to October 5, 1953, the employees of the Railway Company had always made these transfers, although that is a disputed fact."

During the course of the hearing the Employees quoted from letters written by three different Division Chairmen, and from three employees at the Pine Bluff Warehouse (Employees' Exhibits E-1, E-2 and E-3), to the effect that the disputed work had always been performed by Cotton Belt employees prior to October 5, 1953. The Carrier offered no Exhibits refuting the Employees' position.

The last paragraph of the Award further states:

"There is no contract in evidence showing that the Railway Company had contractual rights to perform this service for the Transportation Company."

In National Railroad Adjustment Board Docket CL-3628, Claimant T. F. Nease, Jonesboro, Arkansas, Carrier made this statement on page four of its Submission:

"At Jonesboro, as at various other points, the same freight house is used by both companies; the SWT paying for use of the facilities and for certain work performed by the railroad."

Third Division Award 5878, Referee John W. Yeager, states:

"The Organization has the right to perform all of the work properly belonging to the Carrier which is covered by the Scope Rule. It also has the right to perform all work embraced by the Scope Rule done by the Carrier by agreement or arrangement with another carrier so long as the agreement or arrangement continues. It may not claim any right to the performance of work which was done because of agreement or arrangement with other carriers after discontinuance of the agreement or arrangement, no matter what was the motive or reason for the discontinuance."

The Organization had information to the effect that a contract exists between the Carrier and the Southwestern Transportation Company, whereby the SWT pays the Cotton Belt Railroad a specified amount each month for use of the Carrier's facilities and service. During the hearing repeated efforts were made to have Carrier representatives present this contract in evidence, but a copy of same was never shown to the Employees. Carrier representatives were very evasive concerning the exact service for which the SWT was paying each month, and stated such details were not spelled out. It is inconceivable the SWT would pay out money each month unless it knew exactly what service by the Carrier was contemplated by such payments.

Employee Member's Dissent to Award No. 39

For the reasons that Carrier failed to present all of the facts in this dispute, and that a decision should not have been rendered until such facts were presented, I dissent from the Award.

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member