C O P Y

ORG. FILE 8-1 & 8-1-48
CARRIER FILE D-2686 & D-2707
NRAB FILE CL-9441

AWARD NO. 17
CASE NO. 17

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
to
DISPUTE St. Louis-San Francisco Railway Company

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

CLAIM I

A. The Carrier violated the terms of the currently effective Agreement between the parties when on February 1, 1956, it moved the Freight House force at Miami, Oklahoma, from the Freight Station to the Passenger Station, leased the Freight Station to the Frisco Transportation Company, and farmed out all of the L.C.L. rail freight handling work to employes of the Frisco Transportation Company, a subsidiary truck line.

B. Extra Clerk F. D. Greenfield and/or his successors, as the senior available extra clerk on the Northern Division of the Carrier, now be paid a day's pay at the rate of $15.89 per day, plus any increases since that time, for February 1, 1956 and each work day thereafter, Monday through Friday of each week, until corrected.

CLAIM II

A. The Carrier violated the terms of the currently effective Agreement between the parties when on February 6, 1956, employes of the Frisco Transportation Company performed the work of handling the L.C.L. Freight contained in Car SF149140.

B. F. D. Greenfield now be allowed a day's pay at the rate of $15.89 per day.

CLAIM III

A. The Carrier violated the terms of the currently effective Agreement between the parties when on or about February 10, 1956, it removed a part of the work of waybilling L.C.L. freight from the scope of the Clerks' Agreement and assigned it to the third shift telegrapher, who holds no seniority or other rights under the Clerks' Agreement.

B. L. A. Woods, Chief Clerk-Cashier, now be allowed a two hour call for each date, Monday through Friday of each week, from February 14, 1956, until corrected.

CLAIM IV

A. The Carrier violated the terms of the currently effective Agreement between the parties when on February 22, 1956, all work of handling in-and-outbound L.C.L. freight was performed by employes of the Frisco Transportation Company, and the waybilling and manifesting of all outbound L.C.L. freight was performed by employes of another craft and class, who hold no seniority or other rights under the Clerks' Agreement.

B. L. A. Woods, Chief Clerk-Cashier, now be allowed a day's pay at time and one-half for February 22, 1956.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

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

This Special Board of Adjustment has jurisdiction over this dispute.

CLAIM I

On February 1, 1956, the Carrier moved the freight house forces at Miami, Oklahoma which included:

Chief Clerk Cashier	8:00 AM - 5:00 PM
Claim Clerk	8:00 AM - 5:00 PM

200 feet across the tracks to the Passenger Station where the telegraphic forces included

Agent-Telegrapher	-
Telegrapher Ticket Cashier	1:00 AM - 9:00 AM

Thereupon the Carrier leased the Freight House (reserving a small space) to Frisco Transportation Company, a corporate subsidiary of the Carrier, engaged in the business of the common carriage of freight by highway motor truck. This resulted in changes in the method of handling and checking l.c.l. shipments; and these changes form the basis of this claim, which involves the method of handling at Miami, Oklahoma.

For several years the Carrier has contracted with FTC to haul its l.c.l. freight shipments into and out of Miami in schedules operating between Springfield, Missouri and Miami, Oklahoma and between Tulsa, Oklahoma and Joplin, Missouri. By reason of local ordinances regulating the use of city streets by heavy highway equipment, the Carrier also maintained contracts with a

local drayman to perform pickup and delivery service at Miami. During this period until February 1, 1956, FTC maintained a freight house two blocks north of the Carrier's Freight House, using FTC employes for the purpose of handling (i.e., loading and unloading) and checking l.c.l. merchandise passing through the FTC freight house. Likewise during this period until February 1, 1956, the Carrier has maintained a Freight House, using clerks under the Clerks' Agreement for the purpose of handling (i.e. loading and unloading) and checking l.c.l. merchandise passing through the Carrier's Freight House.

The action taken by the Carrier on February 1, 1956, left undisturbed the performance by the Carrier's employes of the expensing of waybills on inbound l.c.l. shipments and the waybilling of outbound l.c.l. shipments but eliminated all intermediate handling or checking by the Carrier's Clerks once an l.c.l. shipment, inbound or outbound, is put into the custody of the line truck carrier, who now furnishes to the Carrier both line truck service and local dray service. Thus, an inbound l.c.l. shipment from Springfield is checked and delivered by the Carrier's employes to FTC at the Carrier's Springfield Freight Station where it is receipted for by FTC, hauled by line truck to Miami where it is unloaded by FTC employes in FTC leased space at the Carrier's Freight Station and then checked and loaded into FTC local drays for delivery to the consignee at Miami. And an outbound shipment to Springfield is handled the same way in reverse until it is delivered to the Carrier's employes at the Springfield Freight Station where it is checked from FTC.

It is the position of the Organization that l.c.l. freight handled on rail billing for a rail carrier by a truck line carrier violates the Clerks' Agreement, if the outbound freight is not delivered by the local contract drayman to a railroad clerk at a railroad station or warehouse where the railroad clerk can make delivery to the truck line carrier at the railroad station or warehouse; or if the inbound freight is not delivered by the truck line carrier to a railroad clerk at a railroad station or warehouse at destination or transfer point where the railroad clerk can make delivery either to the consignee or to the local contract drayman or to the station-to-station transfer contractor.

First. The Agreement covers work and does not fasten onto a facility owned by the Carrier except insofar as the Carrier devotes the facility to railroad operations covered by the Agreement. The Carrier was therefore justified in moving the clerical forces into the Passenger Station and leasing the Freight Station, if work which the Clerks were entitled to perform there ceased to exist.

Although these l.c.l. shipments moved by motor truck, and not by rail, they moved from point of origin to destination on rail billing, and not on FTC billing. Therefore, it was a railroad operation, but only in the limited sense of the Carrier's right to bill and collect for the shipments and the Carrier's consequent responsibility to the shippers or consignees.

The accounting work attendant upon billing and collecting for the shipments never has been relinquished by the Carrier and is still being performed by the Carrier's employes at the Passenger Station, and not by FTC employes.

The intermediate handling and checking by the Carrier's employes served no purpose except to maintain a continuous check on the shipments when they moved during the course of shipment in interrupted custody among FTC, the Carrier and the local contract drayman, i.e., by way of transfer from FTC freight house to Carrier freight house and by way of transfer from the Carrier freight house to the local contract drayman and vice versa in reverse shipment.

What the Carrier has done here has been to place these shipments in the uninterrupted custody of FTC from the point of receipt by FTC to the point of receipt by the consignee and from the point of pickup by FTC to the point of receipt by the Carrier. This is more accurately an elimination by the Carrier of its own intermediate checks, and of the handling attendant upon making them, rather than a "farming out" of the intermediate handling and checking. Instead of making its own checks in the course of shipment, the Carrier has committed uninterrupted custody and undivided responsibility (as between the Carrier and FTC) to FTC, still retaining its basic responsibility to shippers or consignees. There is nothing to prevent the Carrier from assuming, if it wishes to do so, the risks attendant upon eliminating its own checks and relying upon FTC's performance throughout the course of shipment (Award 5822).

It follows from all of this that after February 1, 1956, the handling and checking of l.c.l. merchandise, while it was in the uninterrupted custody of FTC during the course of shipment, was incidental to the truck carriage by FTC and was not covered by the scope rule of the Clerks' Agreement.

CLAIM II

This claim is based upon the handling by FTC employes of a carload of merchandise moving all rail into and out of the freight station.

This constituted the "farming out" of Clerks' work to strangers who had the right to handle trucks but not railroad cars.

The preponderance of the evidence of record requires an affirmative award.

CLAIMS III AND IV

These claims are based upon the handling of waybilling l.c.l. freight in the Passenger Station by a third shift Telegrapher and upon the abolishment of the Claim Clerk position and assignment of the work to Telegraphers on a holiday.

There is evidence of a dispute in 1955 involving the subject matter of these two claims. The dispute was settled by way of compromises on the part of both parties "without prejudice." The settlement therefore cannot now be used by either party as a precedent.

S.B.A. No. 194 Awards 7 and 9 govern and require a denial of the claim.

Award No. 17
Case No. 17

A W A R D

Claim I denied.

Claim II sustained.

Claim III denied.

Claim IV denied.

/s/ Hubert Wyckoff
Chairman

/s/ T. P. Deaton
Carrier Member

I dissent:
/s/ F. H. Wright
Employe Member
(Reserving the right to file a written dissent)

Dated at St. Louis, Missouri, December 20th, 1957.

DISSENTING OPINION OF EMPLOYE MEMBER TO AWARD IN CLAIMS I, III, AND IV OF AWARD NO. 17 OF SPECIAL BOARD OF ADJUSTMENT NO. 194

CLAIM I.

Employe member dissents from the opinions and conclusions of the majority in Claim I, for the reasons enumerated below:

1. The majority has completely disregarded and ignored entirely the fact that the freight, the checking and handling of which is the subject of this claim, is all rail freight tendered to the rail carrier on rail bills of lading, moving into and out of Miami, Oklahoma, on rail waybills and receipted for by consignee on rail freight billing, and has treated this freight as though it were FTC (truck line) freight tendered on truck line bills of lading, moving on truck line waybills and receipted for by consignee on truck line freight billing.

2. The majority has also completely disregarded and ignored the fact that the movement of the freight over roads in substitute service by the FTC Truck Line and the pickup and delivery of freight at Miami, Oklahoma are two separate and distinct operations, presumably covered by separate contracts with the rail carrier, and have treated the movement of this freight as though it were one continuous operation.

The over-the-road movement of the freight in substitute service from origin station of the carrier to Miami, Oklahoma and the over-the-road movement of the freight in substitute service from Miami, Oklahoma, to the destination station of the Carrier constitutes the complete operation of handling the freight in substitute service and has no connection whatever with the checking and handling of the freight over the platform or in the warehouse at either the origin station or the destination station. This operation includes only the over-the-road movement of the freight from one rail station to another rail station. The pickup of outbound freight and delivery of inbound freight at Miami, Oklahoma, constitutes an entirely separate and distinct operation, not connected in any manner with the over-the-road movement in substitute service. The FTC (truck line) employes have no more right to check and handle the freight from or to the pickup and delivery contractor than if they were employes of an entirely different contractor; and the Third Division, N.R.A.B., has many times held that employes of pickup and delivery contractors are not privileged to perform work within the warehouse, but must receive freight to be delivered to consignee or deliver freight picked up from shippers on the platform or at the door of the warehouse of the Carrier, and that this work must be performed by employes of the Carrier in checking and handling of the freight.

3. This award completely and entirely disregards the rights of rail employes covered by the Scope Rule of the Clerks' Agreement to check and handle the rail carrier's lcl freight originating at, or destined to, Miami, Oklahoma, contrary to many awards of the Third Division, N.R.A.B., such as Awards 2686, 4934, 4994, 6346, 6421, 6543, and many others, which hold that employes covered by the Scope Rule of the Agreement are entitled to perform such work.

Employe Member's Dissent to Award No. 17, Claims I, III and IV (cont'd):

4. The award in Claim I is entirely inconsistent with the award in Claim II, with which I agree, holding in effect that because the freight moves into and out of Miami, Oklahoma, in substitute service by truck, employes of the truck line are privileged to check and handle the lcl freight. In other words, the application of the Scope Rule to the checking and handling of lcl freight at Miami, Oklahoma is, by this award, limited to that freight which moves into or out of that station by rail even though it is still the same class and kind of freight in all respects as that moving into that station by rail, and regardless of the fact that the truck line is not responsible for the freight beyond the time it receives the shipments from the rail carrier at origin station or delivers the shipments to the station of the rail carrier at destination.

5. The award in Claim I is so clearly and patently wrong and contrary to previous interpretations of the Agreement as determined by the Third Division, N.R.A.B., as to be completely without value as a precedent at other than Miami, Oklahoma and to have no application to, or be controlling in, any other case at any other point.

CLAIM III

Employe member dissents from the opinions and conclusions of the majority in Claim III, in that this award totally disregards the fact that the third shift telegrapher is required to leave his post of duty to perform a part of the work previously assigned to the Claim Clerk position, which has been held to be a violation of the Agreement by many awards of the Third Division, N.R.A.B. See Carrier's Exhibit "E".

CLAIM IV

Dissent is made to the award in Claim IV in that it is directly contrary to many awards of the Third Division, N.R.A.B. holding that when work attached to a clerical position is necessary to be performed on a holiday, the employe regularly assigned to perform that work during the hours and on the days of his assignment, is entitled to perform that work on holidays under such rules as Rule 43(g), Rule 48, and under Decision No. 2 of the Forty Hour Week Committee.

/s/ F. H. Wright
Employe Member