

Award No. 1
Case No. 1

PUBLIC LAW BOARD NO. 4086

GALVESTON, HOUSTON, AND HENDERSON RAILROAD COMPANY

AND

UNITED TRANSPORTATION UNION (T)

STATEMENT OF CLAIM

Claim eight (8) hours at the respective yard rates of pay in addition to other time earned January 23, 1975 for Engine Foreman R. R. Sauers, Helpers H. B. Miller, Jr. and C. D. Douglas, account other than yardmen performing switching on Kane Boiler Works track. (Claim as stated by Organization).

STATEMENT OF FACTS

Kane Boiler Works, Inc. owns and does business in and upon the premises situated between Twenty-sixth (26th) and Twenty-eighth (28th) Street on Mechanic Street or Avenue C in Galveston, Texas.

The Galveston, Houston, and Henderson Railroad Company (hereinafter referred as the "Carrier") owns and operates trackage borders and services the premises of Kane Boiler Works, Inc., which track runs in an easterly and westerly direction on Mechanic Street or Avenue C and crosses over Twenty-eight (28th) Street where the same intersects Mechanic Street or Avenue C, among other streets of the city. The sole function of this trackage is to service the Kane Boiler Works, Inc.

Portions of said trackage which borders the premises of Kane Boiler Works, Inc. have existed since 1929 and additional trackage was constructed in 1949.

The Carrier has, since 1929, placed cars on tracks bordering the premises of Kane Boiler Works, Inc., for loading and unloading by Kane Boiler Works, Inc. employees.

When performing such loading and unloading functions, Kane employees have moved the cars on the trackage which parallels the Kane Works on Mechanic Street.

In 1949, following the addition of Tracks 1 and 2, the Kane Boiler Works and the Carrier entered into a contractual agreement (hereinafter referred to as the "Kane Agreement") which reaffirmed the right of the Kane Boiler Works employees to make such moves, including an occasional move across an intersection which would be a move onto off-site Carrier yard trackage.

On Thursday, January 23, 1975, Engine Foreman R. R. Sauers, Helpers H. B. Miller, Jr. and C. D. Douglas (hereinafter referred to as Claimants) submitted the time claim giving rise to this hearing.

The claim alleges that the Carrier permitted the Kane Boiler Works employees, using a Kane Boiler Works truck, to move two (2) cars across Twenty-eighth (28th) Street onto Carrier property.

The record indicates a dispute as to whether the number of cars shoved was one (1) or two (2) and the number identification of the car(s) involved.

DISCUSSION

This Board has considered the entire record in this case including the position papers submitted to the Board at its convening on December 16, 1986 and the exhibits submitted by the Carrier and Employees relating to this matter.

Upon this record, the Chairman and Neutral Member of the Board finds as follows:

1. That this Public Law Board finds that the parties are Carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

2. That the record before the Neutral does not refute the first essential fact in this case, namely, that a practice of Kane Boiler Works employees existed as to moving of car both within the Kane property area and across the bordering street. This fact was discussed only in the normal generalized heresay presentations of the parties, but is, in fact, supported with one probative piece of evidence, namely, the Kane Agreement dated March 7, 1949. (Carrier's Exhibit B).

3. That the record does not reveal protests by the employees prior to the execution of the Kane Agreement nor does it reveal subsequent protests by the employee until the date of the claim, January 23, 1975.

4. That the second essential fact is the propriety of the Kane Agreement permitting the total movements of the cars by Kane employees.

5. That the question then becomes one of whether the Carrier had the right to execute such an agreement without the knowledge and agreement of the Organization. Assuming arguendo that the Carrier was limited in its rights to subcontract or modify working conditions, it, then, becomes significant that it was twenty-six (26) years before a claim was filed in protest of the content of such an agreement. While this fact does not excuse the conduct of the Carrier, assuming that it was in error in not, at least informing the employees of its Kane Agreement, it is clear that the employees had not considered this act seriously until sufficient time had elapsed to assure that a practice had been established. It is equally established that subsequent to this claim, no further claims have been submitted. Even though, it seems reasonable and was possibly a requirement under the Railway Labor Act, as amended, to discuss what can be considered a change in working conditions, it is definite that the Employees did not take any timely action to challenge the Kane Agreement and as a result, has foreclosed, by the doctrine of estoppel by laches, its right to make claims against the provisions of that agreement and the previously established practice.

AWARD

In view of all of the foregoing, the claims are denied in their entirety.



Jack W. Cassle, Chairman and Neutral Member



M. L. Janovec, Carrier Member



J. L. Easley, Employee Member

This award dated this 30th day of December, 1986