



Award No. 5324

Docket No. 5127

2-LV-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That within the meaning of the current agreement and letter dated July 29, 1954 addressed to former General Chairman of the Carmen, George E. Sellers by former Chief of Personnel, C. L. Wagner, Carrier is violating the contractual rights of the Carmen's Craft, particularly at Sayre, Pennsylvania by assigning work of loading and unloading piggyback trailers on railroad cars, work that has been recognized as carmen's work, to other than carmen at Horsehead, New York. Said violation commencing on or about July 1, 1965.

2. That accordingly, carrier be ordered to properly assign the work at Horsehead, New York to employees of the carmen's craft at Sayre, Pennsylvania.

EMPLOYES' STATEMENT OF FACTS: The last sentence of Part 1 of the Employees' Statement of Claim set forth in our notice letter to the Board dated February 24, 1966, and above, contains a typographical error. It should read "Said violation commencing on or about July 1, 1964," and we respectfully request that it be corrected to so read.

The Lehigh Valley Railroad Company, hereinafter referred to as the Carrier, maintains facilities for loading and unloading of auto truck trailers (piggyback trailers) on railroad flat cars at Newark, N. J., Allentown, Pa., Wilkes-Barre, Pa., Manchester, N. Y., Rochester, N. Y., Buffalo, N. Y. and Suspension Bridge, N. Y. At these points Carmen are regularly employed and assigned to block, secure and inspect the shipments (truck trailers) subsequent to loading and prior to unloading.

Prior to July 1, 1964, Carrier established facilities for loading and unloading auto truck trailers (piggyback trailers) on railroad flat cars at Horseheads, N. Y. No Carmen are employed at this point and commencing on or

be technical but some actual proof besides uncorroborated statements which have been denied at least by implication in contrary statements is necessary to assist the Board in a proper decision. . . ."

Also Second Division Awards 1110, 1808, 3015, 3170, 3283, 3387 and 3544.

CONCLUSION

1. It is the fundamental right of the carrier to assign the work in question in whatever manner is necessary or desirable, unless the right to make such decisions has been limited by law or some clear language in a collective bargaining agreement.

2. The Organization bears the burden of proving that it has secured the exclusive right to load and/or unload piggyback trailers from flat cars.

3. There is no provision in Rule 121, "Classification of Work," of the current Carmen's Agreement which specifies that all work incidental to loading and/or unloading trailers from and/or to piggyback cars is work belonging exclusively to a carman. This dispute appears to be an effort on the part of the employees to create a new rule without negotiation. The carrier does not deny at some points, where carmen are employed, carmen have performed the work made the basis of this dispute, however, it does insist that this work is not covered by the carmen's classification of work rule and, therefore, need not be confined to that class.

4. A reading of the letter dated July 29, 1954, does not, as the Employees contend, grant carmen an exclusive right to the work incidental to loading and/or unloading piggyback trailers.

Therefore, in view of the foregoing, the carrier respectfully requests this claim be denied.

All matters above have either been verbally discussed with, or given in correspondence to the Employees.

Carrier does not desire oral hearing unless same is requested by the Employees.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Carrier maintains facilities for loading and unloading of auto truck trailers (piggyback trailers) on railroad flat cars at Horsehead, New York. No Carmen are employed at this point. Draymen load and unload the truck trailers.

Employes allege that the contract drayman, in addition to loading and unloading the piggyback trailers, secures, blocks and inspects the shipments after loading and before unloading. This work, the Employes say, belongs to Carmen under Rule 121 of the Agreement.

The Carrier emphatically states that the contract drayman at Horsehead, New York does not block, secure and inspect piggyback trailer shipments. The work referred to in Carrier's letter of July 29, 1954, upon which Employes rely, involves "the use of heavy wooden blocking to block the trailers on the flat car, applying jacks under the front and rear ends of the trailer and fastening the trailer to the flat car by means of lateral and longitudinal chains adjusted to proper tension by use of ratchets." This work is not done at Horsehead, New York, nor is it done at several other similar facilities operated by the Carrier. The present operation of releasing trailers for unloading and tying down a trailer after loading is done with a simple operating hitch device. Trucking Company employes do this work not only at Horsehead, New York, but also at Jersey City, New Jersey, Newark, New Jersey, Allentown, Pennsylvania, Wilkes-Barre, Pennsylvania, Manchester, New York, Buffalo, New York, Rochester, New York and Suspension Bridge, New York.

Loading and unloading of piggyback trailers is not work reserved to Carmen in Rule 121 or in any other Rule of the Agreement. The Statement of Claim alleges that the Carrier violated the current agreement and letter dated July 29, 1954 "by assigning work of loading and unloading piggyback trailers on railroad cars, work that has been recognized as carmen's work, to other than carmen at Horsehead, New York." There is no evidence that the work of loading and unloading piggyback trailers, as now performed, "has been recognized as carmen's work." Employes have presented no convincing evidence that only Carmen have loaded and unloaded truck trailers.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1967.