



Award No. 5911

Docket No. 5691

2-LT-USWA-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**UNITED STEELWORKERS OF AMERICA  
AFL-CIO, DISTRICT No. 28**

**LAKE TERMINAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF PETITIONER:**

I am claiming 8 hours for each of the following dates, September 27, 28, 29, 30, and October 3, for violation of the schedule agreement Rule #14, Section #4, Paragraph C. the rerailling of cars and engines when required and any work connected with railroad cars shall be considered Car Shop work. On these days the M. of W. Department employees and Supervisors were engaged in the operation of tying piggyback trailers down on freight cars on track 769. This is also a violation of Paragraph #4 on Page One on definitions.

**PETITIONER'S STATEMENT OF FACT:** On September 19, 1967 Mr. K. J. Lolly, master car builder, in an informal conversation with Mr. B. McDivitt (then acting grievance committeeman) told Mr. McDivitt that the company was instituting a piggyback operation on track 769, as soon as the M. of W. employees constructed the docking facility with which to load and unload trailers. He stated that work on this construction would begin the next day. He also told Mr. McDivitt that car repair department employees would get the job of unhitching and tying down the trailers and that he (Mr. Lolly) had already ordered the electric impact wrench with which to do the job.

When the actual unloading and loading operations began on September 27, 1967 and continued to October 2, 1967 it became quite evident that the company had decided to maintain this operation without carmen, since no carmen were assigned to the work, no jobs were bulletined for bid and no car department supervisors were asked to be present to acquaint themselves with the procedure.

**POSITION OF PETITIONER:** It is the union's position that the work of unhitching and tying down trailers on freight cars is the exclusive work of the car department employees and is covered by the last sentence of Rule 14, Section 4(c), of the agreement between the parties.

2nd—the company should have posted for the positions to perform the work on the piggyback operations as indicated by rule 6, section 4(a) of the agreement between the parties.

work performed by supervisors. The mere allegation that manual work was performed by supervisors does not suffice. Assuming, but not conceding, that there may have been manual work performed by supervisors, it was solely in line with instruction or advice as to the proper method of handling the equipment involved in the operation.

The petitioner's statement that Master Car Builder K. J. Lally, "told Mr. McDivitt that the Car Repair Department employees would get the job of unhitching and tying down the trailers \*\*\*\*\*", is entirely false. This conversation took place prior to the inception of the piggyback operation, and the carrier had no idea as to who or what employees would be utilized to perform the work in question. The employees no doubt assumed the work would accrue to them as the equipment to be used was ordered by the master car builder. In any event, there was no contractual obligation on the part of the carrier to assign the work in question to car shop employees or to enter into an agreement with representatives of the car shop employees making such work the exclusive duties of carmen. This was new work, never performed by any of the carrier's employees, and not covered by rules of schedule agreements of any craft or class of employees.

For the reasons advanced above, the carrier respectfully submits this claim must be dismissed.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 were given due notice of hearing thereon.

In September 1967 Carrier instituted a temporary piggyback operation on Track 769. Spread over about fifty-one days, the operation consisted of loading and unloading of trailers on and off cars at the ramps, and releasing and securing of the trailers. Carrier assigned Euclid Truck drivers (Carrier Operators) to operate tractors used in loading and unloading. Maintenance of Way Department laborers were given the task of releasing or tying down the trailers (they operated a trailer hitch using an electric impact wrench), and Car Shop employes were used to perform necessary repair work.

Fifty-five claims were submitted by Car Shop employes during the course of this piggyback operation. (Claims ED-4-67 through CD-58-67). One, CD-4-67, submitted by Car Repairman B. E. McDivitt, was appealed to this Board and, presumably, its disposition will determine the disposition of the other claims. Petitioner contends—and Carrier denies—that the work of unhitching and tying down trailers on freight cars is the exclusive work of Car Department employes under Rule 14, Section 4 (c). It also maintains that Carrier was obligated to post positions to perform the disputed work and that supervisors were improperly assigned manual work in connection with this project.

The principal issue concerns the applicability of Rule 14, Section 4 (c), which provides:

"(c) Car Shop work shall consist of rebuilding, maintaining, dismantling, painting, and inspecting railroad cars; pipe and inspection work in connection with air brake work on railroad cars; operating punches,

shears, hand forges, heating and burning torches in connection with work on railroad cars; painting, stenciling, and scraping of railroad cars; inspection of interchange cars and safety appliances on all railroad cars; car shop welders will be permitted to perform all burning and welding operations in Car Repair Department unless the Locomotive Shop welder's position is cancelled in which case the Locomotive Shop welder will be recalled to perform all burning and welding jobs in the Car Repair Department which do not pertain directly to car repairs. The rerailling of cars and engines when required and any work connected with railroad cars shall be considered Car Shop work.

The Car Department shall also keep in light repair (up to one (1) hour repair) all heavy equipment such as hydraulic press and A frame. All jigs and fixtures used in fabricating ends, sides, and floors shall be built and maintained by the Car Repair Department. All maintenance on the air buggy used to check the train lines shall be done by the Car Repair Department."

Petitioner relies primarily on the phrase ". . . and any work connected with railroad cars shall be considered Car Shop work". However, it seems highly doubtful whether the words "any work" were intended to be literally applied. Rather, this phrase must be read within the context of the entire paragraph which, as may be noted, is designed to preserve maintenance and repair work (plus certain other enumerated tasks) to Car Shop employes. Where Petitioner's interpretation to be accepted, no work connected with railroad cars would be outside the jurisdiction of the Car Shop.

Since the disputed work does not involve, nor is it connected with, the repair or maintenance of cars, it does not fall within the exclusive purview of Car Shop employes. Significantly, the work in question was new work, never performed prior to September 1967 by Carrier or its employes. The Board has frequently held that, under similar circumstances, the new work could not have been within the contemplation of the Agreement. See Award 2377 (Second Division), Awards 8127 and 11453 (Third Division), among others.

Since piggyback trailers were new, there could be no controlling custom or practice, in this Carrier, involving the assignment of work in connection with their use. A review of Board decisions, moreover, reveals no prevailing industry practice with respect to work assignments on piggybacks. See, among others, Second Division Awards 5324, 4915, and 5643, as well as Third Division Awards 7299, 16515, and 14931.

In light of the above findings, Petitioner's claims must be denied since the disputed work was not covered by the Agreement nor did it belong exclusively to Car Shop employes.

#### A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.