



Award No. 5643

Docket No. 5543

2-LV-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement and letter dated July 29, 1954, thereby violating the contractual rights of the carmen, particularly at Newark, New Jersey, by assigning the blocking, securing and inspection of Sea-Land and United States Lines Trailers after loading or prior to unloading railroad cars used in piggyback service, to other than carmen, beginning on April 18, 1966.

2. That accordingly, carrier be ordered to compensate the two (2) carmen at the top of the overtime board, who were available due to being off duty from their regular assignment, eight (8) hours each at the punitive rate of pay for April 18, 1966, and all subsequent dates that the work here in dispute is performed by employees other than carmen until the work is properly assigned to employees of the Carmen's craft.

EMPLOYEES' STATEMENT OF FACTS: Oak Island, N.J. yards are located in Newark, N.J. The carrier maintains provisions at Oak Island for the loading and unloading of auto truck trailers (piggyback trailers) on railroad flat cars. The carrier also maintains these facilities at Allentown, Pa., Wilkes-Barre, Pa., Manchester, N.Y., Rochester, N.Y., Buffalo, N.Y. and Suspension Bridge, N.Y. At all these points, including Newark, N.J., Carmen are regularly assigned to block, secure and inspect the shipments subsequent to loading and prior to unloading.

On April 18, 1966 the carrier discontinued doing the work of loading and unloading Sea-Land and United States Lines trailers at Oak Island yard, and started performing this work in carrier's yard, located at another area in Newark, N.J. The carrier then assigned employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees to perform the work of blocking, securing and inspecting the shipment subsequent to loading and prior to unloading.

It appears here that an award from the Second Division of the National Railroad Adjustment Board sustaining the claim of the Carmen in this operation would result in removal of work from the employees covered by the Clerks' Agreement, and such removal would be in direct violation of such agreement. Under the circumstances we must request that the claim of the Carmen of System Federation No. 96 be denied in order that the work here in question be properly retained under the Clerks' Agreement and performed by employees covered thereby.

(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 employe or employees 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 waived right of appearance at hearing thereon.

This Claim was filed on behalf of two (2) Carmen at the top of the Overtime Board, who were available due to being off duty from their regular assignment on April 18, 1966, and all subsequent dates that the involved work was performed by other than Carmen. Carrier contends that the Claim should be dismissed for the reason that it has been progressed on behalf of unnamed Claimants, contrary to Article V of the August 21, 1954 Agreement. This Board does not agree with this contention. It has been well settled that a Claim may be filed and progressed on behalf of an unnamed Claimant if the name of the Claimant is easily and readily identifiable. It is the opinion of this Board that the Claimants in this dispute can be easily ascertained by a check of Carrier's records on the dates involved herein. Therefore, the merits of this dispute will be considered.

The procedural requirement of notifying the third party to this dispute (Brotherhood of Railway and Airline Clerks) has been met and their submission is acknowledged.

The record discloses that prior to April 18, 1966, Carrier had transported items on so-called "piggyback" trailers. Commencing April 18, 1966, Carrier transported freight destined for Sea-Land and United States Lines in containers loaded on flat cars which were unloaded by means of an overhead crane which placed the containers on a truck for delivery to their final destination. These containers are fastened to the flat cars by four pins. In the unloading process, these four pins must be released in order that the containers can be lifted off the railroad car by the crane. Employees of the Clerks' Organization were assigned to handle loading and unloading of this freight which resulted in the filing of the instant Claim by the Carmen's Organization.

In their submissions to this Board, both the Carmen and Clerks contend that this work belongs to employees of their respective Organizations. Carmen claim this work under Rule 121 of their Agreement, and Clerks claim this work under Rule 1 of their Agreement.

This Board must consider both the Carmen's and Clerks' Agreements. In so doing, it is found that the freight involved in this dispute is "open top" freight, and that historically Carmen have never had the right to handle this type of freight. In fact, Award 5324 (Dolnick), emanating from this property, established the principle that the loading or unloading of piggy-back freight was not the exclusive work of Carmen. The work involved in this dispute involves open freight, of which the loading and unloading has always belonged to the Clerks. This Board further finds that inspecting and blocking is not necessary on open freight deliveries of this type.

For the reasons stated, this Claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1969.