

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Toledo, Peoria & Western Railroad Company

Dispute: Claim of Employees:

- (1) That under the current Agreement the Carrier improperly used other than Carmen to deliver and return piggyback trailers from the TP&W Railroad Company to Caterpillar Tractor Company, East Peoria, Illinois on January 4th and 5th, 1973.
- (2) That accordingly, the Carrier be ordered to compensate Carmen D. F. Pearson, J. E. Whetstone, R. Dowler, C. E. Rutledge and R. E. Fredrick for two hours pay at the applicable Carmen's rate for each trailer moved from the Carrier's piggyback ramp to Caterpillar Tractor Company and two hours pay for each trailer moved from Caterpillar Tractor Company to the Carrier's piggyback ramp on January 4th and 5th, 1973 and all dates subsequent.

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.

The record shows that on January 4 and 5, 1972 employees of O'Neill Brothers Transfer and Storage Company picked up some TOFC (piggyback) trailers at Carrier's ramp and hauled them to Caterpillar Tractor Company. The tractors apparently were loaded at the Caterpillar Tractor Company and returned to Carrier's ramp where they were loaded on flat cars and subsequently carried by rail to York, Pennsylvania. Claimants are employed at Carrier's piggyback ramp at East Peoria, Illinois as truck drivers whose work is loading and unloading piggyback trailers from railroad cars and pulling them to various locations in and around

Peoria, Illinois. The trailers in question were loaded and unloaded from railroad cars by Claimants, but they were hauled to and from Caterpillar Company by O'Neill employees. Petitioner, on behalf of Claimants, contends that this violated the Agreement effective April 1, 1973, Rule 111, which incorporates the terms of a Memorandum Agreement dated January 25, 1961, and reads as follows:

"The loading and unloading of trailers in TOFC service at E. Peoria Yard is Carmen's work. The driving of equipment necessary for the execution of Trailer on Flat Car Plan II which is door to door pick up and delivery of trailers that have been unloaded/or are to be loaded at E. Peoria Yard, is Carmen's work. The driving of equipment necessary to transport trailers over the highway from Carrier's rails to another rail connection for further trailer rail movement is Carmen's work.

The inspection of trailer securement for TOFC movement is Carmen's work.

NOTE: When, under tariff provisions the Consignor or Consignee is allowed to pick up and/or deliver trailers the Carmen will have no claim to this work."

Carrier resists the claim primarily upon the ground that once the trailers are off-loaded by Claimants at Peoria they are no longer TPW work but rather revert to the Penn Central Transportation Company for further movement. The Penn Central has retained O'Neill Brothers to handle the trailers over the highway in lieu of further rail service. On the return trip the Carrier asserts that the trailers are not TPW work until they are delivered to the TPW ramp by Penn Central's agent, O'Neill Brothers. Thus, Carrier argues that it is an intermediate Carrier only between Peoria and Effner, that the shipment is so routed that under applicable tariffs it has no responsibility or authority over the road delivery at either end of the movement, and that Claimants cannot claim Penn Central work under the controlling Agreement between the Carrier and the Organization.

The Organization insists that the clear language of Rule 111, supra, makes the haulage to and from Caterpillar Company Carmen's work under the Agreement. It is pointed out that Carrier herein serves as billing or receiving agent for the Penn Central and, in fact, arranges with O'Neill Brothers for the pick up and delivery to Caterpillar of the trailers. Finally, the Organization notes that Carrier reimburses \$11.00 to Penn Central of the \$22.00 charge per trailer that O'Neill Brothers receives for each haul.

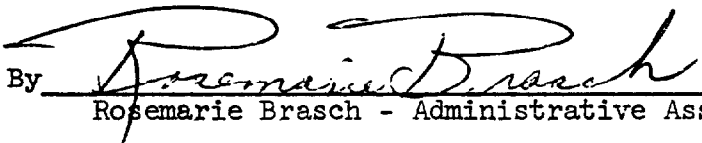
We have considered carefully the Agreement language cited and the evidence offered by each of the parties in this case. Although any one piece of evidence might support a different conclusion we are of the considered opinion that the sum total of the evidence leads to a finding that movement from Carrier's ramp to Caterpillar and return was Penn Central and not TPW work. As such, it is not controlled by the cited rule of the Agreement herein. Numerous awards of this and other Divisions have held that work belonging to a third party and thus outside the control of Carrier cannot support a claimed violation of the Agreement regarding assignment or performance of work by Carrier's employees. See Awards 2213, 4570, 6533; also Third Division Awards 8076, 9762, 20250 and 20529. We have no alternative but to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of July, 1975.