

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood: (a) For and in behalf of the available employees for eight hours pay at the appropriate rate for July 10, 1946 and all subsequent dates due to contract employees of the Willett Trucking Company and other trucking companies performing work of checking, loading or unloading freight at the Indianapolis and Louisville Freight Stations.

(b) That sufficient positions be established and filed under the provisions of the Agreement to perform the work now being performed by the above-mentioned contract employees. (Docket W-447)

EMPLOYES STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees, between the Carrier and the Organization which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

The Carrier has a contract with the Willett Trucking Company for the handling of its pick-up and delivery (P. U. & D.) service freight to and from consignees at Indianapolis, Indiana, and Louisville, Kentucky.

The Willett Trucking Company operates a fleet of motor trucks which are manned by drivers employed by that company. The trucking company referred to in some instances sub-lets a portion of the P. U. & D. business of the Carrier to drivers owning and operating their own trucks.

Freight inbound to the two stations referred to is unloaded from cars by Truckers (employees of the Carrier covered by Group 2 of the Scope of the Clerks' Rules Agreement) and moved to sections or zones marked off inside the freight houses and corresponding to certain sections or zones in the respective city. The individual Trucker is guided to the proper section or zone by a check mark placed on each shipment by the Tallyman (employee of the Carrier covered by Group 1 of the Clerks' Rules Agreement) in charge of his gang.

The bills for the shipments are then turned over to the dispatcher of the contract trucking company, who sorts them according to routes, after which they are delivered to the drivers of the motor trucks who proceed to

said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION: The Carrier has established that there has been no violation of the applicable Agreement and that the Claimants are not entitled to compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

Exhibits not reproduced.

OPINION OF BOARD: In 1933, the Carrier instituted pick-up and delivery service in an effort to recapture some of the LCL freight business it has lost to motor truck competition. This service is provided by the Willett Trucking Company at Carrier's freight stations in Indianapolis, Indiana, and Louisville, Kentucky, the places where the present dispute arose. In view of the fact that the evidence pertaining to the Indianapolis Freight Station controls the decision at both points involved, we shall limit the factual situation to that point.

The Indianapolis Freight Station is 820 feet long and 29 feet in width. It is divided into four sections, the P. & D Section (Pick-up and Delivery Section) being the one with which we are here concerned. The P. & D. Section consists of one part 26' x 282' for inbound freight and a second part 26' x 235' for outbound freight and are served by Doors 30 to 48, inclusive. There is no outside platform at this station. Motor trucks using this facility are therefore required to back up to the doors of the freight station and load or unload direct from or to the floor of the freight station. Each section is divided into zones, each door being considered a separate zone. Each zone is therefore approximately 26' x 27' in area. The zones in the P. & D. Section are assigned by the Willett Trucking Company as to consignees or territorial routes for the accommodation of its trucks engaged in the pick-up and delivery service.

The operations are then carried out in substantially the following manner: On receipt of a car of LCL freight, a Tallyman identifies the freight from the waybill on which a route clerk has marked the zone number to which the freight is to be assigned for pick-up by motor truck. The Tallyman then prepares a ballot (or chalk marks the freight itself), indicating the waybill number, the number of pieces of freight in the shipment, and the zone where the freight is to be trucked. The freight is then trucked to the designated zone by a trucker employe of the Carrier. A copy of the waybill is then turned over to the Truck Dispatcher of the Willett Trucking Company, who sorts the waybills and delivers them to the truck drivers who proceed to load their trucks from the zones allotted to them. In loading their trucks, the drivers check the number of pieces of freight in each shipment with the waybill and also check the condition of the freight. After the freight has been loaded, the Carrier delivers to the driver a "Record of Shipment Delivered by Drayman" who secures the signature of the consignee thereon when delivery is made and freight charges col-

lected. When the freight is not found in the designated zone by the trucker, the procedure is to mark the waybill "Cannot find" and turn it over to the Carrier's Platform Foreman for Carrier employes to locate and truck to the proper zone. There is evidence that on occasion the driver locates and trucks the freight to the zone. Sometimes the volume of freight assigned to a zone exceeds its capacity, in which event it is placed in another zone not necessarily adjacent to the zone where the motor truck is parked. Sometimes an employe of the Carrier assists the truck driver in loading such freight, and sometimes the truck is moved to the adjacent door. Outbound freight is unloaded by the truck drivers from their trucks to designated zones, after which it is checked and trucked by trucker employes of the Carrier.

It is the contention of the Organization that the work of trucking incoming freight from the zone to the truck and outgoing freight from the truck to the zone, is work belonging to Clerks by virtue of their Agreement with the Carrier. It is not contended that the actual loading of motor trucks is not the work of the truck driver and helpers.

This Division seems to have determined that the checking, handling and trucking of freight into and out of a freight warehouse is within the scope of the Clerks' Agreement and that third parties may pick up or deliver freight only upon the platforms of the warehouse, or at the door thereof where no platform exists, without infringing upon the rights of Clerks under their Agreement. Awards 2686, 2387, 2006, 1649, 1647.

The Carrier asserts, however, that the question has been settled on its railroad by Decision No. 209 of the Clerical and Miscellaneous Forces' Board of Adjustment contrary to the foregoing awards and whatever the interpretation may be on other railroads, that decision is controlling here. We shall hereafter refer to this decision as Decision 209.

In Decision 209, it was the contention of the Organization that railroad truckers should make tailboard delivery of inbound freight arriving in delivery service to motor vehicles engaged in pick-up and delivery service. It was the contention of the Carrier therein that it had been a long recognized practice for the truck drivers to perform such incidental handling of freight from a location on the platform in the freight house to their vehicles and that the rights of Clerks end when the freight in question has been handled by them from the inbound car to the location accessible for delivery in the section of the freight house. In holding that the Carrier's position was the correct one, the Board said:

"Certainly it was not intended that the schedule of regulations should apply to the movement of freight in motor vehicles from the freight station to the place of business of the consignee or the loading or unloading of such vehicles. As there is no occupational definition of the term 'freight truckers', its meaning and as well as the scope of the regulations must necessarily be determined in the light of established practice. The schedule, presumably, was designed to cover these operations which had historically been handled by railroad employes as well as any new activities which are essentially of the same character. If the contract defined the duties of truckers and the definitions expressly covered the work in question, there would be some point to the Brotherhood's insistence on the letter of the agreement. But actually the schedule is silent and the Brotherhood in assuming that the term covers the work in dispute assumes without demonstration the very issue of this case. But the case cannot be disposed of so easily. The problem is one of construction—what is the true meaning of the term 'freight truckers' as used in the schedule?

* * * It was hardly within the contemplation of the parties in drafting the regulation that the less economical of the two possible

methods of handling this freight operation should be followed. Only the plainest language would justify such a conclusion and such language is *not to be found in the schedule*. The proper and business-like division of work between the railroad and the trucking companies employees is that which the carrier has put in effect. The practice that has been followed since the inauguration of the service in 1933, so far as the movement of the freight from the platform to the tailboards by the drivers and helpers of the trucking company is concerned, is entirely consistent with the letter and spirit of the schedule of regulations."

It is clear to us that this decision decided the very question we have now before us. The Organization contends, however, that it is no longer controlling. The rule is that an interpretation once made and acted upon for a long period of time, on a portion of the Agreement which is subject to interpretation, makes the Agreement enforceable according to such interpretation until it is changed by negotiation. Consequently, whatever the rule may be as to other agreements with other Carriers, the definition of a "freight trucker" on the Pennsylvania Railroad is subject to the interpretation placed upon it by Decision 209.

It is argued, however, that a new Agreement has been entered into since Decision 209 was rendered and that this has the effect of nullifying the interpretation made in that decision. The rule of contract interpretation is that the readoption of language from a former agreement into a new one carries with it the meaning given to the language of the former, unless by clear expression an intent to change the meaning is shown. No such intention is shown by the adoption of the new agreement.

The present effectiveness of the decision of "The Pennsylvania Railroad Clerical and Miscellaneous Forces' Board of Adjustment" in controlling the interpretation of the present Agreement is herein questioned. Award 3628 disposes of this question. We therein said:

"The interpretation placed upon the Agreement by that Board is binding upon this Board. And this is true notwithstanding the fact that a new Agreement has been negotiated by the parties since that decision, in that there is nothing carried forward in the new Agreement that would indicate that the interpretation of the System Board was intended to be completely eliminated."

It is urged also that the new Agreement specifically supersedes all previous and existing Agreements and that exceptions to its provisions must be agreed to in writing. An examination of Rules 9-A-1 and 9-A-2, current Agreement, does not directly or inferentially eliminate any rule interpretations previously made. The position of the Carrier is the correct one as between the parties to this dispute.

As to the claim that the drivers of the motor trucks engaged in checking freight, we hold as follows: All checking of freight to or from the freight station for the benefit of the Carrier is work belonging to Clerks. Any checking of freight to or from a motor truck on behalf and at the direction of the Willett Trucking Company is not within the scope of the Clerks' Agreement. The nature of the checking complained of is not made clear by this record and this item of the claim will be remanded for further consideration on the property. The claim that trucking freight from the zone to the tailboard of the truck and from the tailboard to the zone is Clerks' work under the current Agreement is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim will be disposed of in accordance with Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.