Award No. 5819

Docket No. CL-5700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY (Eastern District)

STATEMENT OF CLAIM: Claim of General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Union Pacific Railroad Company, that the Carrier violated the Clerks' Agreement

(1) When it required or permitted, and continued to require or permit, employes of trucking firms, who hold no seniority rights under the Clerks' Agreement with the Union Pacific Railroad Company to come into the freight warehouse at Kansas City, Missouri and truck freight from warehouse into motor trucks and trailers,

(2) That senior (unemployed) furloughed Warehouse Truckers be compensated for wage loss for each and every day since July 26, 1950 or date the violation was first called to attention of Carrier's Agent, Mr. R. V. Tye.

EMPLOYES' STATEMENT OF FACTS: The subject of this grievance was initially discussed with the Carrier's Assistant to the Vice President, Mr. J. L. Singent, in conference on July 14, 1950. It was thereat agreed that a joint investigation would be made at Kansas City to determine the facts. During the interim, however, the Employes' Local Representative, Mr. Anderson Thomas, filed formal written protest with Local Agent, Mr. R. V. Tye, at Kansas City. Shortly thereafter, or on August 10, 1950, a joint investigation was held at Kansas City pursuant to the understanding had with Mr. Singent on July 14, 1950, to determine the facts. They developed that the Carrier was permitting employes of trucking firms to come into the Freight Warehouse at Kansas City and truck freight from Motor Trucks and Trailers into Warehouse (outbound freight) and from Warehouse into Motor Trucks and Trailers (inbound freight). The investigation or check was made on the outbound side of the Warehouse first and Mr. Singent readily agreed the Carrier was in violation of Clerks' Agreement and instructed Freight Agent, Mr. R. V. Tye, that this practice should stop immediately. The joint check or investigation was then conducted on the inbound side of the Warehouse and as soon as Mr. Singent saw that a Motor Rentals employe was trucking freight from the Warehouse into the Motor Trucks or Trailers, he informed Freight Agent R. V. Tye that this was no different than the outbound side of the Warehouse that the Carrier was in violation of the Clerks' agreement and that Mr. Tye should have an

Employes have not obtained by negotiation, authority for which is not possessed by the National Railroad Adjustment Board under the Railway Labor Act.

(e) Awards of the National Railroad Adjustment Board do not support in any manner the claim and contentions of the Employes. On the contrary, awards of the National Railroad Adjustment Board definitely and unequivocally support and affirm the position of the Carrier herein.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner in this case contends that the carrier has been and is now in violation of the Scope Rule of the relevant Agreement with respect to the way in which certain inbound freight is handled in the Kansas City Freight Warehouse. It is asserted that carrier permits or requires employes of trucking firms to come into the freight warehouse and truck freight from certain bays to motor trucks at the platform.

The record shows that at the time this controversy arose complaints were made concerning the way in which carrier was handling both inbound and outbound freight. As a result of joint investigation made on or about August 10, 1950, agreement was reached concerning the complaints with respect to outbound freight handling. However, no agreement could be reached with respect to the complaint about inbound freight handling. Hence, the issue comes before this Division for determination.

Inbound LCL freight destined for connecting railroads, is unloaded by carrier's employes and placed in designated bays in a certain section of the Freight House. From these bays, each of which has a large door opening to the platform, the freight is moved to motor trucks operated by certain contract haulers by employes of the trucking firms. Petitioner contends that the carrier is in violation of the Scope Rule by allowing or requiring the employes of the trucking firm to truck the freight from the bays into the motor trucks for transfer to connecting roads.

The carrier takes the position that this method of moving LCL freight for connecting roads is a long established practice which has existed for over 25 years. Therefore, by virtue of this fact the complained of method of handling cannot be said to be in violation of the Scope Rule.

The record reveals some disagreement between the parties with respect to certain comments the carrier's representative is alleged to have made on the occasion of the joint investigation referred to above. Petitioner states that carrier's representative agreed that the complained of method of handling was in violation of the agreement. However, the carrier asserts that this is a misrepresentation of his statement. It is not necessary to resolve this conflict in order to dispose of the case—the essential issue for determination is whether the complained of method of handling inbound freight for connecting carriers is a violation of the Scope Rule in view of past practice. The Board has made many Awards dealing with similar situations. As these Awards show past practice must be given consideration, particularly where the Agreement terms bearing upon an issue are vague or lacking in clarity. Where such terms are clear in meaning and intended application, past practice has frequently been held to bar or limit retroactivity.

In the instant case the Scope Rule appears to be clear with respect to its inclusion of the work performed by the employes of the contract hauler in trucking or moving freight from the bays to the truck for loading. Prior Awards of this Division support such a finding, particularly Awards 1647, 4463, 4994, and 5526. The last cited Award 5526 deals with a situation wherein the facts were very similar to those present in the instant case.

It is appropriate in view of these considerations for the Board to make a sustaining Award.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of June, 1952.