

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at Hammond, Indiana when on or about July 1, 1954 the "Piggy-Back" operation was instituted at Hammond, Indiana and all subsequent dates, the Carrier removed work coming within the scope and coverage of the Clerks' Agreement and assigned such work to employees not covered thereby, and

That the Carrier shall restore such work to the scope and coverage of the Clerks' Agreement, and

That the Carrier shall now compensate Employees R. W. Elkin or Paul Smith or Eric Bystrom for wage loss sustained retroactive to on or about July 1, 1954, or when the "Piggy-Back" operation started at Hammond, Indiana until such time as violation complained of is corrected. (Claim 1059.)

EMPLOYEES' STATEMENT OF FACTS: On or about July 1, 1954 a "Piggy-Back" operation was instituted on the Erie Railroad covering L.C.L. freight in trailer loads from Jersey City, New Jersey to Hammond, Indiana and transfer freight from Akron, Ohio to Hammond, Indiana. Trailers are moved on special flat cars equipped with devices for tying down and holding the trailer in place. Trailers are blocked with blocks. Jacks are placed under the trailer to remove weight from the dolly end of the trailer and from the springs at the rear of the trailer. It is then fastened down with springs adjusted to the proper tension by turnbuckles. When trailers containing transfer freight are removed from flat cars and spotted at the freight house or platform at Akron, Ohio, they are loaded or unloaded by the regular freight house handling force. When trailers are being reloaded, an employee classified as a Stowman, covered by the Clerks' Agreement, is assigned to police the trailer to insure proper and maximum loading. The work of tying down and untying the trailers has been assigned to Carmen, employees not covered by the Clerks' Agreement.

On other than the trailers containing the transfer freight, trailers are loaded solid at shipper's plant and pulled by power unit direct to Carrier's loading yard where it is put on the flat car by the power unit. It is then tied down by Carmen employees not covered by the Clerks' Agreement. Empty trailers are handled in the same manner as loaded trailers—that is, the

OPINION OF BOARD: On July 12, 1954, Carrier inaugurated Piggy-Back service covering LCL freight in trailer loads between Jersey City, New Jersey and Hammond, Indiana, and transfer freight from Akron, Ohio, to Hammond, Indiana. It is the contention of the Organization that the Carrier thereby removed work from the scope of the Clerks' Agreement which it demands shall now be returned to the Clerks'. A claim for wage losses is also made by certain named Clerks holding assignments at Hammond.

Piggy-Back service is the hauling of trailers on flat cars instead of pulling them over the highway in the conventional manner. After the shipper has loaded the trailer and the trucker has placed the trailer on the flat car, it is secured to the flat car by Carrier's Car Department employees. On arrival at destination the trailer fastenings are removed by Carmen and the trailer removed by the trucking company for delivery to the consignee. It is the work of fastening and unfastening the trailer to the flat car that affords the real basis of this dispute.

The record shows that two trailers are usually placed on each flat car. Each car is equipped with devices for tying and holding each trailer in place. They are also blocked with blocks. Jacks are placed under each trailer to remove the weight from the dolly at the front and the springs on the rear. The trailer is then fastened down with springs adjusted to the proper tension by turnbuckles. It is the contention of the Organization that this work is incidental to the work of freight handlers and that it therefore belongs to Clerks as being within the scope of their Agreement. It is the position of the Carrier that this is new work resulting from a new service placed in operation by the Carrier to recapture the transportation of freight lost to the highway trucking industry. It is urged by the Carrier that the work of fastening and unfastening trailers on freight cars was not contemplated by the scope of the Clerks' Agreement and has not been contracted to any class or craft.

The scope rule of the Agreement does not describe the work reserved to Clerks. It sets forth the classes of positions to which it is applicable. The work intended to be encompassed by the scope rule is necessarily that which is traditionally and customarily performed by the occupants of the positions therein described. Award 4827. See also Awards 6670, 6758. It cannot be successfully argued that the work in question has been customarily and traditionally performed by Clerks because it is new work that has not been performed heretofore. Any claim to the work must therefore rest on the theory that it is so similar to the recognized work of Clerks that it can be said that the terms of the Agreement contemplated its inclusion within its scope.

The pertinent part of the scope rule provides:

"Group 2. Station baggagemen, * * *, station freight house, transfer, pier and warehouse forces, such as callers, loaders, stowers, sealers, coopers, * * * and others performing similar work in connection with any of these operations."

Rule 1(a), current Agreement.

The Organization contends that since the stowing, bracing and blocking of LCL freight in freight cars is recognized as Clerks' work, that the work here in dispute is likewise that of Clerks because it is in fact the same work being performed in a different manner. It is pointed out that LCL freight has been shipped in containers which have been handled by clerical forces into and out of freight cars. From this it is contended that a trailer is nothing more than a large container filled with LCL freight, and consequently the work of Clerks. The Organization further contends that the freight contained in the trailers is less than carload freight as distinguished from carload freight. The Organization cites Awards 864, 3746 and 4033 to the effect that the Agreement refers to the character of the work and not merely to the method of perform-

ance. These awards are not strictly in point as each of them involves the performance of work admittedly belonging to Clerks in a different manner due to improved mechanical devices used in performing the work.

The Carrier asserts that Piggy-Back service is an entirely new service placed in operation long after the current Agreement with the Clerks was negotiated. It points out that it was necessary to have tariffs fixed by the Interstate Commerce Commission covering this new type of service. It is further shown that trailers are not handled over freight platforms at freight houses, but are spotted and unloaded from flat cars at special ramps at points other than where LCL freight is handled. It is shown that some eastern railroads have assigned the work to others than Clerks and at least one western railroad has assigned such work to Clerks. It is pointed out that while trailers are loaded with LCL freight, many aspects of Piggy-Back service resembles that of carload shipment, i.e., there is but one consignor and one consignee; the contents are loaded by the shipper into the trailer and unloaded therefrom by the consignee, although this might not be true as to transfer freight which undoubtedly would be unloaded by freight handlers. It is pointed out that this Board has determined by past awards that a right to maintain elevators and conveyors did not include subsequently installed escalators (Award 4584); that levermen and towermen did not include operators of CTC machines (4452); or that the operation of teletype machines, car retarders, telephones and similar developments were not the exclusive work of any craft when not contemplated by existing agreements.

It is obvious to us, after a consideration of the foregoing presentations, that we are in no position to say by the weight of the evidence and the degree of certainty required, that the work here in question is the exclusive work of Clerks. It may be that Clerks, Carmen, or others, are fully competent to perform it, but we cannot find that a sufficient basis exists for saying that it has been assigned exclusively to Clerks under the terms of their Agreement with the Carrier. The Carrier has not contracted away its right to designate the class or craft to perform the work. Such being the case, no basis exists for an affirmative 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 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 the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.