

Award No. 11240
Docket No. CL-11019

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(EASTERN DISTRICT, BOSTON AND ALBANY DIVISION)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the rules of the current Clerks' Agreement on October 7, 1957, and thereafter continued to violate the Agreement when it permitted employes of trucking firms, who hold no seniority rights under the Clerks' Agreement, to come into the freight warehouse and to check and truck freight from various locations in the freight warehouse into motor trucks and/or trailers, and

(2) That Clerks J. J. Foley and W. E. Coughlin and/or their successors shall each be additionally compensated 2 hrs. pay at the pro rata rate of Delivery Clerk, effective Oct. 7, 1957 and continuing in effect until such time as the Agreement is complied with, this being 2 hrs. pay for each day involved, and

(3) That Freight Handlers B. Narcotta and W. L. Hood and/or their successors shall each be additionally compensated 6 hrs. pay, for each day involved, at the rate of Freight Handler, effective Oct. 7, 1957 and continuing each day thereafter until such time as the Agreement is complied with, and

(4) That Clerk J. M. McGrath and/or his successor shall be additionally compensated 2 hrs. pay each day, at the rate of Delivery Clerk, effective October 29, 1957 and continuing on each day thereafter, until such time as the Agreement is complied with, and

(5) That Freight Handler A. Gregorio and/or his successor shall be additionally compensated 6 hrs. pay at the rate of Freight Handler, effective Oct. 29, 1957, and continuing on each day thereafter, until such time as the Agreement is complied with, and

(6) Should additional Lumpers of the NYC Transport Co. be utilized, the senior Clerks and/or Freight Handlers affected shall be

additionally compensated, as provided above on the basis of 2 hrs. clerical work and 6 hrs. Freight Handlers work, for each day such additional Lumpers are used, and

(7) Carrier shall be required to immediately return this work to the scope of the Clerks' Agreement, and that

(8) Any other employe who might be adversely affected shall be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: Carrier operates two freight warehouses at Kneeland St. Freight Yard, Boston, Mass. which warehouses are known as House No. 1 and House No. 4.

At House No. 1, carrier performs outbound freight operation. This outbound operation comprises freight received for shipment to points outside of Boston. The work involved in this operation is performed by Clerks and Freight Handlers under the scope of the Clerks' Agreement. Truck Drivers back their trucks up to the door of the warehouse and unload their freight onto a four-wheel truck which is placed at the tailboard and/or close proximity thereto by a Freight Handler. During the time the driver is unloading his truck onto the four-wheel truck, the freight is checked by a Receiving Clerk at the door. After the four-wheel truck is loaded, it is then pushed by two Freight Handlers across the warehouse floor and into waiting cars where it is then loaded therein for shipment to consignee. In this case the truck driver, who is not covered by the scope of the Clerks' Agreement, unloads his truck contents onto the four-wheel truck at the tailboard of his truck, and does not go into the freight warehouse.

At House No. 4, carrier performs an inbound freight operations, but not in the same manner as at No. 1 House, which fact gives rise to the present dispute. Briefly, the operation is performed by freight being unloaded and checked from cars by Clerks and Freight Handlers who are under the scope of the Clerks' Agreement. This freight is then trucked by the Freight Handler and placed in certain bays on the freight warehouse floor. After the freight has been so placed, a so-called Lumper who is employed by the New York Central Transport Co. and who is not under the scope of the Clerks' Agreement, checks and loads the freight from the floor of the warehouse in the bays onto a truck and/or trailer. There are approximately 21 doors in this section of the warehouse which are used for this operation. Each bay is approximately 55 ft. in depth, 15 ft. wide, 2 or 3 ft. between bays and the bays are 10 ft. back from the door of the warehouse. The Lumper, therefore, checks and trucks freight the entire length of the warehouse, approximately 65 ft., into the truck and/or trailer, which truck and/or trailer is the property of the New York Central Transport Co.

After the Lumper loads the truck and/or trailer, he then signs a delivery slip and turns same over to a B & A Clerk and the slips are later signed by a Clerk who does not check the freight, but merely signs the slip on instructions from the carrier.

At various times over the years other firms held the contract for the P&D with carrier and the practices were varied as to this operation. In certain cases the truck driver loaded the truck from the warehouse floor.

In other cases, the freight was trucked to the tailboard of the truck by employes under the scope of the Clerks' Agreement. However, the outbound operation has always had tailboard delivery.

"Employees have placed considerable reliance on Award 1647 but the holding in that case did not go so far as to hold that tailgate delivery must be effectuated by Carrier's employees. Furthermore, Award 1647 was issued in December of 1941 and the Organization agreed to settlement of other disputes over handling of freight by contract haulers for something less than 'tailgate delivery', after its adoption. The facts of record in Award 1647 were considerably different than those involved in the instant case. In holding that the claim as presented herein cannot be sustained, we are in no way expressing disagreement with the reasoning of the Board nor with the result reached in that Award. Rather, we feel that were we to sustain the claim as presented, we would in effect be writing a new rule for the parties here involved, something which this Board has no authority to do. It is to be hoped that the parties themselves, by further negotiation can resolve their differences over the performance of the work involved. Judging from their past record with respect to this claim and the compromises reached at other stations on the property, that would seem to be a fair prospect." Claim denied.

CONCLUSION

The Carrier has shown this claim to be without merit. The checking of the freight from the car and the trucking of same to the designated bays in the freight house is being done by employees represented by the Clerks' Organization. The handling of LCL shipments by contract draymen was inaugurated as a service to the public and as an inducement to create business. In fairness to the public the Carrier should not be required to impair the efficiency or increase the expense by being required to rehandle the shipment from the bay to the tailboard of the trucks or trailers. Furthermore, that the handling of freight from a bay to the truck was considered tailboard delivery, see Carrier's Statement of Facts, Page 6. Therefore, it is respectfully requested that claim be denied.

All data contained herein has been made known to the Organization either in conference or in writing.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The New York Central Railroad.

Carrier operates two warehouses at Kneeland Street Freight Yard, Boston, Massachusetts. They are designated as #1 and #4. At Warehouse #1, Carrier performs outbound freight operation, i.e., freight received for shipment outside of Boston. The work is performed by clerks and freight handlers under the scope of the Clerks' Agreement. No one outside of the Agreement enters the warehouse.

At Warehouse #4 Carrier performs an inbound freight operation. The freight is unloaded and checked by employees covered by the Agreement. The freight is then trucked by the freight handler and placed in bays on the warehouse floor. Then a lumber, employed by the New York Central Transport Company, and not under the scope of the Agreement, checks and loads the freight from the bays in the warehouse onto a truck and/or trailer.

Other firms have held the contract for the P & D with Carrier and practices were varied. In some instances the truck driver loaded the truck from

the bays and other instances, employees under the scope of the Agreement trucked the freight to the tailboard of the truck.

Petitioner contends that the trucking of freight in the warehouse is work which belongs to them. Carrier contends that tailboard delivery has been accomplished when the freight has been placed in the bays. Carrier further contends that past practice is contrary to petitioner's position.

On March 27, 1956, the parties to this dispute in a Memorandum set forth their interpretation and understanding of the agreement. That interpretation is as follows:

1. Freight unloaded from cars would be placed in designated zones, called bays, by Railroad freight handlers.
2. The floor area for each bay would be painted allowing enough room to work front, rear and each side of this area.
3. Each zone would have a number painted on the rear wall of the freight house.
4. Freight not placed in the designated zone through error or lack of floor space would be trucked to the proper zone by freight handlers (Railroad employees).
5. Whenever possible shipments would be placed in the forward (loading) end of the zone.
6. Outside truckers and contract draymen employees are restricted to picking up freight from within the confines of each zone.

Since the parties have already mutually agreed to an interpretation of this part of the Agreement we cannot now interpret that which had already been made clear by previous agreement.

The interpretation made by the parties should and will continue in full force and effect until otherwise changed by mutual agreement.

For the foregoing reason we believe the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.