

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4797) that:

(1) The Carrier violated the current Clerks' Agreement when it removed the work of compiling clerical records in connection with its "Piggy-Back" service from the position of Car Clerk at Evansville, Indiana and assigned the work to a contract drayman, a Mr. Fentress, who is not covered by the parties' Agreement.

(2) The work of compiling clerical records in connection with "Piggy-Back" service at Evansville, Indiana shall be returned to employees coming under the scope of the clerical agreement.

(3) Mr. Bayless Knodel shall be allowed a "Call" for each regular work day at the prevailing rate of his position of Car Clerk beginning on March 4, 1959 and continuing until the violation of the Agreement is corrected.

EMPLOYEES' STATEMENT OF FACTS: From the time "Piggy-Back" service was first started at Carrier's Wansford Yard located at Evansville Indiana, the regular assigned position of Car Clerk at this yard handled all orders for Trailer or "Piggy-Back" loading, was required to obtain all empty trailers to protect such loading, i.e., the loading of empties on hand, the ordering of empties from Chicago to protect prospective loading, or obtaining permission from Chicago to obtain available empty trailers from designated trucking firms at Evansville to protect loadings. The foregoing necessitated the keeping of records by this Car Clerk of all inbound and outbound trailer movements both loaded and empty, a running record of trailers on hand and daily contact with the Chicago trailer office to obtain disposition on empties on hand or the ordering of additional empties.

Claim was presented by Claimant Bayless Knodel the regular assigned occupant of the position of Car Clerk under date of March 18, 1959 which set forth the above information. Copy as Employees' Exhibit 1(a).

some by the Wansford yard office. Then as now, all these inquiries and requests were eventually routed to the contractor, however, it is pertinent that the transmission of such messages was not the exclusive prerogative of the agent's clerical forces.

Mr. Behler's statement that he encouraged the shippers and receivers of trailers destined for rail movement to maintain closer contact with the contractor, who in the final analysis had the responsibility to service their needs, was a logical and rational move designed to avoid confusion and conflict. It was also proper for him to encourage closer contact between the contractor and his office. Neither act took away from the agent's clerical forces any work that was properly theirs and further, Mr. Behler is quite emphatic that not at any time did he take away from nor add to the record keeping required of the agent's clerical forces at Evansville. On the contrary, he points out that the contractor still must maintain contact with the agent's forces in the areas within which their services are required — which is in that area which has to do with the movement by rail.

In the closing paragraph of Mr. Knodel's letter we finally get to the crux of the matter. Here is revealed the ultimate objective that is the goal of this claim, which is not to prevent the transfer of work to others, but to secure for the clerks work which they have never performed. Ever since the inauguration of piggy-back shipments by rail the clerks have attempted to establish jurisdiction over all phases of the operation. When claimant compares the trailer operation with the accumulation, distribution and supplying of railroad cars, he reveals the real motivation behind his claims.

The facts are that the clerks at Evansville have never had the responsibility for the accumulation, distribution, and supplying of highway trailers. This is the responsibility of the contractor and he is not accountable to the agent or the agent's forces therefor. There are no records required by the carrier in connection with the accumulation, distribution and supply of trailers within the Evansville terminal. Accordingly, there is no clerical work that could be performed by agent's clerical forces even if such work were properly within their jurisdiction.

The claim that clerical work formerly required of the agent's forces at Evansville has been transferred to others is not supported by the record. The claim for compensation is therefore without merit and must be denied.

OPINION OF BOARD: Claimant, Car Clerk at Carrier's Wansford Yards, Evansville, Indiana, claims that Carrier violated the Clerk's Agreement when it removed work of compiling clerical records in connection with its "Piggy-Back" service from the position of Car Clerk at Evansville, Indiana, and assigned the work to a contract drayman, W. R. Fentress, who is not covered by the Agreement. The work involved was more specifically described by the Claimant as follows:

"To handle all orders for trailer or 'piggy-back' loading, and to obtain empty trailers to protect such loading, i.e.: the loading of empties on hand, the ordering of empties from Chicago to protect prospective loading, or obtain permission from Chicago to obtain available empty trailers from designated trucking firms at this terminal in order to protect such loading. This necessitated the keeping of records at this terminal of all inbound and outbound trailer movements both loaded and empty, a running record of trailers on hand, and daily contact with the Chicago trailer office to obtain disposition on empties on hand or the ordering of additional empties."

Carrier's method of operating its "Piggy-Back" service was as follows: It offered the public several plans, one of which was described as "The railroad performs complete door to door service under the provisions of railroad issued tariffs." Under this plan the Railroad contracted with a motor Carrier to handle the highway end of the "Piggy-Back" operation. Such a contractor would pick up an empty trailer at the railroad yard, or supply such a trailer from its own equipment or secure one from another trucking Carrier under a lease arrangement made by the Railroad, and deliver same to the shipper. When the trailer was loaded, the contractor received it and receipted for bills of lading. The trailer was then hauled to the yard where it was placed on a flat car and made ready for movement by the contractor's forces. The procedure was reversed when a shipment arrived at the yard for motor transport to a consignee.

Prior to the alleged transfer of work there was no clear cut procedure established for maintaining contacts with shippers or receivers of "Piggy-Back" business to establish delivery time and loading and unloading requirements. Sometimes this information would be channeled through Carrier's commercial office, sometimes through the Wansford Yard office, and sometimes through the contractor, W. R. Fentress.

Carrier found this to be an unsatisfactory procedure and, according to the record, made the following changes:

"(a) We encouraged (we did not instruct or demand) the relatively few shippers and receivers of piggy-back loads in Evansville to maintain a close direct contact with our contractor, Fentress, and conversely, we *encouraged Fentress to maintain a closer contact with shippers and receivers.*

(b) We encouraged the contractor to discuss his operational problems with this office rather through the second-hand and wholly unsatisfactory method of relaying messages through the agent's office at Evansville. . . ."

The record indicates that when shippers contacted Fentress or the Carrier's commercial office they used to turn such information over to the Claimant who then relayed the information to the Chicago headquarters. He would order cars to protect the shipment and keep records of the orders for trailers and the number of trailers on hand so that he knew what the situation was at any time. It should be stressed that, in connection with this claim, the only work is that which involved the supply and movement of trailers not flat cars.

Carrier contended that the record keeping which Claimant performed with reference to the movement of trailers on the highway, before or after it had been transported by the Railroad, was neither assigned to the Claimant nor necessary for the operation of the Carrier's business and that, if such records were kept by the Claimant, it was for his own convenience and was not required by the Carrier. The Claimant conceded that none of the records he kept were transmitted to any other official of the Railroad. They were records which were started by him and ended with him. Even though such records were not required by the Carrier, the Carrier cannot escape responsibility for such work by the mere disclaimer that it had not been assigned to the Claimant. The record indicates that the Carrier knew that the Claimant was performing such work and on at least one occasion Carrier asked Claimant to verify certain information by consulting his records. It is our opinion that the Claimant has sustained its burden of proof that it performed this clerical work as part of the duties of Car Clerk.

This claim, however, does not depend only on whether Carrier removed such work from the Claimant. Claimant also has the burden of proving that this work was transferred to Fentress. In our opinion, Claimant has not sustained that burden. The work which was formerly done by Claimant was not only removed. It was eliminated. His work was to relay orders from shippers to Fentress. He also relayed information as to the supply of trailers and their movement between Fentress and the central office. The change innovated by the Carrier did not alter the kind of work which Fentress had previously been doing except in one respect. He had previously received such orders directly from the shipper or directly from the Claimant. Under the new procedure he now received such orders directly from the shippers. He continued afterwards as before to notify the Carrier as to how many empty trailers he had used. The one difference was that where he had formerly reported such information to the Carrier by telephone he now confirmed it in writing by filling out a form supplied by the Carrier. Similarly the information with respect to the need for empty trailers or the disposition thereof which is communicated between the central office and Fentress is done directly instead of being routed through the Claimant.

This Board has heretofore held that the Carrier has a right to eliminate an intermediary step. Where there has been a bona fide elimination of the middle man this does not constitute a transfer of work. In Award 11494 (Moore), this principle was confirmed in the following statement: "We find that the work was eliminated rather than transferred. The work of the position was a relaying of the information. After the position was abolished the information was sent directly to the office concerned instead of it being sent to the occupant of the abolished position. This Board has previously held that this action does not violate the agreement. (See Award 2449)."

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.