Award No. 14751
Docket No. CL-15556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, 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 (GL-5738) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule and Rule 2-A-1 (a), when, commencing February 1, 1963, it used employes of an outside Contractor to unload automobiles from freight cars at the Bi-Level Automobile Unloading Operation at Windsor Street Yard, York, Pennsylvania, former Chesapeake Region, now the Harrisburg Division, instead of assigning the work to employes covered by the Scope of the Clerical Rules Agreement and advertising the positions required as provided in Rule 2-A-1 (a).

(b) Claimants C. L. James, L. Pearson, W. E. Clifford, A. R. Scott, A. V. Serio, W. C. Mitchell, B. R. Parker and C. E. Wantz, should be allowed eight hours' pay a day, commencing February 1, 1963, and continuing until the violation is corrected. (Docket 1507)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood 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.

Under date of May 25, 1963, the Division Chairman listed the claim for discussion with the Superintendent, Personnel who, following a meeting held on June 21, 1963, denied the claim by letter dated July 17, 1963, as follows:

> "With the exception of E. E. Wantz, assigned as a Trucker at York Freight Station, the Claimants at the time claim was filed were all furloughed Group 2 employes.
>
> Automobiles shipped into the Truck-Train Terminal, York, Pennsylvania, are unloaded from the bi-level and tri-level cars by employes of Scott Brothers.
>
> The work in question has never been performed by Clerical employes at York, not does such work accrue exclusively to employes covered by the Scope of the Schedule Agreement.
>
> Additionally, claim does not meet the requirements of Rule 7-B-1 and threfore, is invalid.
>
> On the basis of the foregoing, claim is denied."

The Division Chairman subsequently requested the preparation of a Joint Submission for the further handling of this matter by the General Chairman with the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. A copy of the Joint Submission is attached as Exhibit "A".

This matter was discussed by the General Chairman with the Manager, Labor Relations at a meeting held on May 20, 1964. The Manager, Labor Relations denied the claim by letter dated June 10, 1964, maintaining the Carrier's position that (1) the claim was not properly validated under Rule 7-B-1 (a) and (2) the work of unloading automobiles does not accrue exclusively to clerical employes, hence the Scope Rule was not and is not being violated. A copy of the Manager, Labor Relations, letter of June 10, 1964, is attached as Exhibit "B".

The claim was relisted for discussion at a special meeting held on January 19, and 20, 1965, following which the Manager, Labor Relations, in a letter dated February 11, 1965, reaffirmed his previous denial.

Therefore, so far as the Carrier is able to anticipate the basis of the Employes' claim, the questions to be decided by your Board are (1) whether the claim here in dispute was properly validated under Rule 7-B-1 (a) of the applicable Agreement and is thus properly here before this Board, and (2) whether the unloading of new automobiles at the York Truc-Train Terminal by employes of the Scott Brothers Company violated the Scope Rule of the Clerical Rules Agreement.

(Exhibits not Reproduced).

OPINION OF BOARD: The Brotherhood contends that the Carrier violated the Rules Agreement between the parties, effective May 1, 1952, except as amended, and more particularly the Scope Rule and Rule 2-A-1 (a), when it used employes of Scott Brothers, an outside contractor, to unload automobiles from freight cars, for the Carrier, at the Windsor Street Yard, York, Penn-

sylvania, and failed to advertise any positions to perform this work, as provided by Rule 2-A-1 (a).

The Carrier denies that there is or was any violation of the Rules Agreement on its part. It further contends that this claim is not properly before this Board for consideration or adjudication on the ground that this claim has not and was not properly validated on the property pursuant to and in accordance with the provisions of Rule 7-B-1 of the Rules Agreement.

We first consider the objection of the Carrier that this claim is not properly before this Board for consideration and adjudication.

The Carrier bases its objection on the ground that the claim was not presented, originally, "to the employe's immediate Supervisor" pursuant to and in accordance with the provisions of Rule 7-B-1 of the Agreement between the parties. The part of the Rule which concerns us, reads as follows:

"Claims for Compensation

7-B-1. (a) Claims for compensation alleged to be due, may be made only by an employe or by the 'duly accredited representative' as that term is defined in this Agreement, on his behalf, and must be presented, in writing, to the employe's immediate Supervisor within ninety days from the date the employe received his pay check for the pay period involved, except:

1. Time off duty on account of sickness, leave of absence, suspension or reduction in force, will extend the time limit specified in paragraph (a) of this rule (7-B-1) by the period of such time off duty.

2. When a claim for compensation alleged to be due is based on an occurrence during a period employe was out of active service due to sickness, leave of absence, suspension or reduction in force, it must be made, in writing, within ninety days from the date the employe resumes duty.

(b) If claims are not made within the time limit specified in the foregoing paragraph (a) of this rule (7-B-1) including Exceptions (1) and (2), they will not be entertained nor allowed."

At the time claim was made, Claimant Wantz was the incumbent of a position of Trucker at the Freight Station, at York, Pennsylvania. The remaining Claimants had been furloughed under Rule 3-C-1, but were entitled to return to service as provided by the terms and provisions of Rule 3-C-3 (b).

The record discloses that by letter dated May 8, 1963, the Division Chairman of the Brotherhood presented a claim, which both parties agree, is substantially the same as that appearing in the Statement of Claim, to Mr. C. H. MacMullen, Superintendent, Stations, Chesapeake Region, whose office is in Baltimore, Maryland. The record does not contain a copy of the letter. By letter dated May 14, 1963, Mr. MacMullen denies the claim. In his letter he states, as one of the reasons for his denial of the claim is that the "claim does not meet the requirements of Rule 7-B-1" without stating in what manner and/or respect the requirements of Rule 7-B-1 were not complied with.

On May 25, 1963, this claim was listed for discussion with the Superintendednt, Personnel. On June 21, 1963, the meeting was held. By letter dated July 17, 1963, the claim was again denied. One of the reasons given for the denial was "additionally, claim does not meet the requirements of Rule 7-B-1, and, therefore, is invalid." Again without stating in what respect and/or manner the claim does not meet the requirements of the Rule.

Thereafter a Joint Submission was prepared by the parties for a further handling of this claim by the General Chairman of the Brotherhood with the Manager, Labor Relations of the Carrier, the highest officer of the Carrier designated to handle disputes on the property. The Joint Submission, signed by the parties, is dated February 28, 1964, and is as follows:

"THE PENNSYLVANIA RAILROAD
CHESAPEAKE REGION
AND
THE BROTHERMOOD OF RAILWAY AND STEAMSHIP CLERKS

SUBJECT:

Docket No. 1586—Claim of the Division Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope, when it used employes of another craft rather than employes of The Pennsylvania Railroad, covered by the Scope of our Rules Agreement, beginning February 1, 1963, to unload Automobiles from freight cars.

(b) The positions of unloading automobiles from freight cars should be advertised in accordance with Rule 2-A-1 (a), at the Bi-level, Automobile Unloading operation at Windsor Street, York, Pennsylvania, plus any position connected with this operation, as this work is no different than that performed by stations over the entire system. Employes of our craft or class unloaded new automobiles from box cars, including those equipped with Evans loading racks. Also, employes of our craft or class loaded and unloaded automobiles which were shipped in Baggage Service. It is our position that the loading and unloading of new automobiles from these tri-level cars, or any other type cars, is not new work and is work accruing to employes of our craft or class which they always performed.

(c) This claim effective February 1, 1963, and to continue until corrected and adjusted, and position advertised.

(d) Claim is in behalf of the following employes for eight hours' pay per day from the effective date of this claim until settled:

1. C. L. James
2. L. Pearson
3. W. E. Clifford
4. A. R. Scott
5. A. V. Serio
6. W. C. Mitchell
7. B. R. Parker
8. C. E. Wantz

JOINT STATEMENT OF AGREED-UPON FACTS:

With the exception of Claimant C. E. Wantz, who was assigned as a Trucker at York Freight Station, York, Pennsylvania, the Claimants were all furloughed Group 2 employes who last performed service as Baggagemen at Pennsylvania Station, Baltimore, Maryland.

Automobiles shipped into the TrucTrain Terminal located at York, Pennsylvania, are unloaded from the bi-level and tri-level cars by employes of Scott Brothers Company.

POSITION OF EMPLOYES:

It is our opinion that the work of loading and unloading automobiles, is work that accrues to our craft or class, as this work is no different than that performed by our employes for many years at freight stations over the entire system. Ever since the Railroad began to transport automobiles they were loaded and unloaded by employes of our class or craft. This should be no different now.

The unloading and loading of automobiles in connection with this claim are handled on Pennsylvania Railroad Property, transported by Pennsylvania Railroad cars, and should be loaded and unloaded by the employes of the Pennsylvania Railroad Company as has always been done in the past.

We are of the opinion that by permitting the employes of another class or craft such as Scott Brothers, to handle this work, which we all know was formerly handled by employes of the Pennsylvania Road, constitutes a violation of our Scope Rule, and all these positions should be advertised in accordance with 2-A-1(a), and that the claim as presented is payable. Rule 7-B-1 was complied with as the employes named in claim had no immediate supervisor. Also, we have asked the Carrier on a number of occasions to furnish a list of Supervisors for all locations who they would consider as the immediate supervisor, but they fail to do so. The chain of command is great on the Railroad and immediate supervisor, is misleading, and can be turned around to meet the needs and will of the Carrier. Approximately eight men per day are being used at the York Terminal.

The claim in this case was presented to the Superintendent-Stations, because the Brotherhood upon refusal of the Carrier to designate who they considered the employe's immediate supervisor, assumed that Superintendent-Stations, meant what the name implied, meaning all stations. Furthermore, the Superintendent-Stations had jurisdiction of the York Agency, and the claimants were not employed at all, as they were on furlough. So the statements made by the Carrier are of no use and are in error.

POSITION OF COMPANY:

Freight Station employes have only been used regularly to load and unload freight to and from cars at the sheds at our freight stations and piers. Loading and Unloading of cars perfromed at team tracks and other locations has not been considered work accruing to freight station employes nor has the work of loading and unloading truc-train cars been considered as accruing to freight station employes nor have such employes been performing this work on the Pennsyl-

vania Railroad at truc-train facilities.

This claim was presented to Superintendent Stations by the Division Chairman in violation of Rule 7-B-1 as the Superintendent-Stations was not the immediate supervisor of any of these claimants.

Trucker C. E. Wantz was employed at York Freight Station, York, Pennsylvania, while all other claimants are furloughed employes, having last performed service as Station Baggagemen under the jurisdiction of the Passenger Agent at Pennsylvania Station, Baltimore, Maryland.

While the Division Chairman in his position is trying to excuse his failure to properly present this claim under Rule 7-B-1, we do not understand why he would present these claims to Superintendent-Stations when the operation at York, Pennsylvania, is under the jurisdiction of the York Agency and all but one of the claimants were not even employed in a department under the jurisdiction of the Superintendent-Stations.

/s/ **H. W. Manning**
Superintendent-Personnel

/s/ **A. P. Santoro**
Division Chairman, B. of R. & S. C.
Baltimore, Maryland, February 28, 1964"

The matter was discussed by the General Chairman of the Brotherhood with Manager, Labor Relations, at a meeting held on May 20, 1964. By letter dated June 10, 1964, the Manager, Labor Relations, denied the claim. In this letter of denial, the Carrier sets forth its position as to the alleged procedural defect, in the following language:

"It is our position that this claim is procedurally defective. Rule 7-B-1 (a) requires that claims for compensation alleged to be due must be presented 'to the employe's immediate supervisor'. This claim was presented to the Superintendent, stations, Baltimore, Md. However, the first seven claimants were furloughed employes who had last perfromed service as Baggagemen at Pennsylvania Station under the immediate supervision of the Passenger Agent. Claimant #8, C. E. Wantz was a Trucker at the York, Pa., Freight Station under the immediate supervision of the Freight Agent. Therefore, the claim was not presented to the claimants' immediate supervisor and is invalid under the provisions of Rule 7-B-1 (a)."

This claim was relisted for further discussion at a special meeting between the parties which was held on January 19 and 20, 1965. After the meeting and on February 11, 1965, by letter dated on that day, the claim was again denied.

An oral hearing in this matter was held before this Board on March 1, 1966, at which hearing both parties were present and represented.

The Brotherhood contends that this matter is properly before this Board for consideration and adjudication and that the Rule in question has been

complied with.

Its contention is based on the following facts:

That when the parties were discussing and processing this claim, the Brotherhood requested the Carrier, on numerous occasions to furnish, advise and/or designate who the Carrier considered the employes' immediate supervisor. These requests were made and had to be made, by reason of the fact that the Claimants, with the exception of Wantz, were all furloughed employes and therefore, in the opinion of the Brotherhood, had no immediate supervisor. These requests of the Brotherhood were never answered by the Carrier. Not having received any answer to the several requests and in order to protect the rights of the Claimants, the claim was presented to the Superintendent, Stations, who was considered, by reason of his position, to be the employes' immediate supervisor. The Superintendent also had jurisdiction of the York Agency. The Carrier does not deny that the Brotherhood made the several requests that it be furnished with the information and that it did not make any answer to such requests. The position of the Carrier on the property, in its Ex Parte Submission and in the oral hearing, was and is that it was under no duty or obligation to comply with the requests and provide the information requested, but that the burden of determining who the Claimants immediate supervisor was, was not that of the Carrier but that of the Claimants.

It is interesting to note that although this claim was being considered by the parties since at least May 8, 1963, the letter of June 10, 1964, sets forth for the first time the position of the Carrier on the alleged procedural defect.

The question that presents itself is whether or not, based on the undisputed facts, the Brotherhood has complied with the Rule and the matter is properly before us for consideration and adjudication.

The law is well settled by numerous decisions which hold that a party to a contract who precludes the other party from performing one of the conditions of the contract, cannot take advantage of such fact, the performance of which the party himself has prevented the other party from performing, or which he has made more difficult.

In the case of **WORMSBECKER vs DONOVAN CONSTRUCTION CO., 247 Minn. 32,** the Court held that where a party to a contract is prevented by the other party to complete performance of the contract, such incomplete performance is excused, especially where the contract can be substantially performed.

In the case of **TRADEWELL FOODS INC., vs NEW YORK CREDIT MEN'S ADJUSTMENT BUREAU, INC.,—179 F2nd—567** the Court held that where a party to a contract is himself the cause of the failure of performance of a condition of the contract he cannot set up such nonperformance as a defense, and may not benefit thereby.

See also **STATE FUEL vs GULF OIL CORP. 179 F2 390 STEVENS vs HOWARD D. JOHNSON CO.—181 F2 309.**

It has also been held by the Courts that where parties to a contract stipulate that one of the parties shall do a certain thing, the other party impliedly promises that he will himself do nothing that will hinder or obstruct the other

in doing that thing; and, indeed, if the situation is such that the co-operation of one party is an essential prerequisite to performance by the other, there is not only a condition implied in fact qualifying the promise of the latter, but also an implied promise by the former to give the necessary co-operation.

See **IN RE CASUALTY CO.—250 N.Y. 410**
PNEUMATIC SIGNAL CO. vs TEXAS etc. RR CO.—200 N.Y. 125
WILLISTON ON CONTRACTS—REVISED EDITION—Sec. 677
13 CORPUS JURIS—CONTRACTS—Sec. 721
15 AMERICAN LAW REPORTS 2nd—955

As to the Claimant Wentz, we find that his factual situation, is different than that of the furloughed Claimants. Wantz, at the time claim was made, was the incumbent of a position of Trucker at the Freight Station, at York, Pennsylvania. He is and must be charged with knowing who his immediate Supervisor was. Under the provisions of the Rule, notice of his claim should have been given, in writing, to his immediate Supervisor. Having failed so to do, we sustain the objection of the Carrier as to his claim, and will deny the claim on the ground that he has failed to comply with the provisions of the Rule.

As to the furloughed Claimants, we find, based on the undisputed facts in this case and on the law, that this matter is properly before us for consideration and adjudication.

We now determine, as to whether or not, the unloading of automobiles at the team tracks at the Bi-Level Automobile Unloading Operation at Windsor Street Yard, York, Pennsylvania, accrues exclusively to clerical employes of the Carrier under the provisions of the Scope Rule of the Agreement between the parties.

The material facts are not in dispute.

The Brotherhood states its position in the Joint Submission, as follows:

"It is our opinion that the work of loading and unloading automobiles, is work that accrues to our craft, or class, as this work is no different than that performed by our employes for many years at **freight stations** over the entire system. Ever since the Railroad began to transport automobiles they were loaded and unloaded by employes of our class or craft. This should be no different now.

The unloading and loading of automobiles in connection with this claim are handled on Pennsylvania Railroad Property, transported by Pennsylvania Railroad cars, and should be loaded and unloaded by the employes of the Pennsylvania Railroad Company as has always been done in the past." **(Emphasis ours.)**

The Carrier states its position in the Joint Submission, as follows:

"**Freight Station** employes have only been used regularly to load and unload freight to and from cars at the sheds at our freight stations and piers. Loading and Unloading of cars performed at **team tracks** and other locations has not been considered work accruing to freight station employes nor has the work of loading and unloading truc-train cars been considered as accruing to freight station employes nor

have such employes been performing this work on the Pennsylvania Railroad at truc-train facilities." **(Emphasis ours.)**

The Carrier does not deny that freight station employes have been and are used regularly to load and unload freight to and from cars at its freight stations and piers but contends that the loading and unloading of cars at team tracks does not accrue to freight station employes under the Scope Rule of the Agreement.

The facility in question was installed at the Windsor Street Yards during January of 1963. It began to operate on or about February 1, 1963.

That there is a distinction between a freight station, as such, and a team track facility, cannot be disputed. They both serve different functions. A freight station is a depot where less than carload lots of freight is received, loaded and unloaded. A team track is for the loading and unloading of freight that comes in car load lots.

In the case of **CHICAGO & E.I.RR. CO. vs CHESTNUT BROS. KY. 89 S.W. 298-299,** a team track was described as a siding on a railroad for loading and unloading cars when freight comes in car load lots.

In the case of **MILLER ENGINEERING CO. vs LOUISIANA RY. & NAVIGATION CO., 81 So. 314-317** team track delivery was described as a service rendered by Carriers in receiving and delivering car load freight in connection with their own line business, and is over tracks owned by the Carriers. It is a service for which no separate tariff charge is provided.

In the case of **SAN FINLEY INC. etc., vs STANDARD ACE INS. CO., 295 S.W. 2nd 819-823,** team tracks were described as being analagous to freight depots in the sense that they bear the same relation to car load freight that a depot bears to less than car load freight.

A team track is defined in WEBSTER'S NEW INTERNATIONAL DICTIONARY—SECOND EDITION (Unabridged) as follows:

> "Team track. Railroad. A sidetrack on which freight care are placed for loading or unloading by shippers and consignees." (Colloq. U.S.)

The Scope Rule in the Agreement is general in character. It does not expressly assign to the Brotherhood the work here involved. The rules relied upon were effective May 1, 1952. There is no evidence in the record to sustain a finding that the existing agreement contemplated that the work claimed was to be covered by the Agreement. The Agreement between the parties is system-wide. It is not confined solely to York, Pennsylvania. It includes all of the Carrier's Divisions. If the work complained of is not specifically set out in the Agreement, the Brotherhood must then show that the work belongs to the Claimants exclusively by past practice, tradition and custom, system-wide. The burden of proof through competent evidence is upon the Brotherhood. The Brotherhood has failed to prove a sufficient system-wide practice to show the exclusive right of these Claimants to this work. Therefore, we are constrained to deny this claim.

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 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 Agreement was not violated.

AWARD

The claim of Claimant Wantz is dismissed. The claims of the furloughed Claimants are denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of August, 1966.

LABOR MEMBER'S DISSENT TO AWARD 14751, DOCKET CL-15556

It appears that by setting up a "straw man" and knocking him over the Referee was satisfied that he had discovered a way to deny the claim. However, that method merely afforded him an opportunity to escape the responsibility of deciding the issue presented, which is what he would have confined himself to.

Perhaps all here involved is lost by this erroneous Award but, inasmuch as such method may appeal to other Referees, I would suggest that, as a rule, **whenever a Referee has found something upon which a claim is to be decided,** that he **again look at the record;** not notes; nor journals; nor dictionaries; nor anything else, **but the record made by the parties,** to definitely ascertain if the deciding issue was raised properly therein.

I recommend the above for the reason that it is apparent that here, after the Referee had busied himself with several other matters, he then supposedly turned to the basic issue before him and promptly committed the error of which I complain, i.e., he wrote:

> "We now determine, as to whether or not, the unloading of automobiles **at the team tracks** at the Bi-Level Automobile Unloading Operation at Windsor Street Yard, York, Pennsylvania, accrues exclusively to clerical employes of the Carrier under the provisions of the Scope Rule of the Agreement between the parties."
>
> **(Emphasis ours.)**

He then proceded to quote various passages from the record underscoring **freight stations; Freight Stations; team tracks.** He then stated that there is

a difference between a freight station and a team track and that:

> "* * * A freight station is received, loaded and unloaded. A team track is for the loading and unloading of freight that comes in car load lots."

and proceeded to support that pronouncement by citation of excerpts from three Court cases, two of which fully support the Employes claim, and the dictionary definition of a team track, which also supports the Employes claim. For example:

> "In the case of **MILLER ENGINEERING CO. vs LOUISIANA RY. & NAVIGATION CO., 81 So. 314-317** team track delivery was described as a service rendered by Carriers in receiving and delivering car load freight in connection with their own line business, and is over tracks owned by the Carriers. **It is a service for which no separate tariff charge is provided."**
>
> **(Emphasis ours.)**

Here a separate tariff charge was made.

> "In the case of **SAN FINLEY INC. etc., vs STANDARD ACE INS. CO., 295 S.W. 2nd 819-823, team tracks** were described as being analagous to freight depots in the sense that they **bear the same relation to car load freight that a depot bears to less than car load freight."**
>
> **(Emphasis ours.)**

If that is so why then would not the same employes who had the right to perform the work of **unloading** less than car load **freight whenever it was Carrier's duty to perform** not also have the right to **unload** car load **freight when it was Carrier's duty to perform?**

The dictionary definition of team track is shown as:

> "Teamtrack. Railroad. A sidetrack on which freight cars are placed for loading or unloading **by shippers and consignees."** (Colloq. U.S.)
>
> **(Emphasis ours.)**

That simply was not what occurred here. First, the facility involved **was not a team track.**

Second, **neither shippers nor consignees nor their agents** performed the work.

Third, as a matter of fact the statement that employes under the Clerks' Agreement unloaded cars of automobiles at Stations, Piers, **Team Tracks**, etc., **whenever such unloading was the responsibility of the Carriers,** wasn't even denied in the record. Instead, Carrier construed the operation here as being "* * * similar in essence to the unloading of a freight car loaded with freight placed on a team track or industry siding for unloading by the **consignee or by a contractor employed by the consignee for that purpose."** Quite obviously neither party needed to turn to an outsider to discover what a "team track" was. And, of course, it is obvious why the record should have been

consulted. **No one contended** that this Bi-Level Automobile Unloading Operation at Windsor Street Yard, York, Pennsylvania was **a team track!**

(Emphasis ours.)

The record is quite clear on the pertinent facts, Carrier contracted with parties outside the collective bargaining agreement **to unload freight for the Carrier.** In other words, it was Carrier's work performed on Carrier's propety.

While doing all the unnecessay research the Referee should not have overlooked a case cited in one of Carrier Members' recent dissents as ACLRR vs. BRC, 210 F2d 812 (1954) wherein the Court remarked that:

> "Collective bargaining agreements like other contracts are to be given a reasonable construction, not one which results in injustice and absurdity."

His award in this case most assuredly reeks of injustice and, by not even getting to the "meat" of the issue, it most certainly is absurd.

Clearly, the Referee either failed to comprehend the basic issue or deliberately chose to evade it as the Carrir was wont to do throughout the record.

The Award is in error and I most vigorously dissent thereto.

D. E. Watkins

Labor Member
8-12-66

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