Award No. 14931
Docket No. CL-13781

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5264) that:

(1) Carrier violated and continues to violate the Agreement between the Parties, effective September 1, 1952 and Supplementary Agreement effective March 23, 1959, particularly Rule 1, among others, when on July 14, 1961, it permitted and required employes and outsiders who are not within the purview of the Agreement to perform duties in connection with the operation of cranes for the loading and unloading of trailers on and off flat cars in its yards at Boston and/or East Cambridge, Massachusetts.

(2) Carrier shall be required to restore all of the work it has improperly delegated to persons outside the scope of the Agreement to employes who are within the scope and coverage of the Clerks' Agreement and entitled to perform it.

(3) (a) Carrier shall compensate the three (3) senior furloughed employes from the consolidated roster of all Boston Division Freight Handlers and Miscellaneous Employes about Freight Station for full salary loss, including upward adjustment in wages, overtime and vacation credits, from July 14, 1961 (the date on which the first crane was placed in operation) and continuing until the work is properly assigned to employes subject to the Agreement.

(b) Carrier shall also compensate the next three (3) senior furloughed employes from the consolidated roster of all Boston Division Freight Handlers and Miscellaneous Employes about Freight Station for full salary loss, including upward adjustment in wages, overtime and vacation credits, from September 9, 1961 (the date on which the second crane was placed in operation) and continuing until the work is properly assigned to employes subject to the Agreement.

NOTE: Reparations to be determined by joint check of Carrier's records.

OPINION OF BOARD: At bottom this is a Scope Rule case. Employes' claim rests on the contention that all handling of freight in the custody and control of Carrier which requires loading or unloading for further movement belongs exclusively to Employes, and that, once trailer unit is deposited by shipper on Carrier's premises, or, if incoming, until it is picked up by consignee from Carrier's premises, handling "piggyback" trailer units to load them onto or to take them off flat cars is such freight handling. Carrier contends that the Agreement does not give Employes the exclusive right to the involved work and that practice proves that the work does not belong exclusively to Employes.

The record shows that Carrier asserted without effective rebuttal by Employes, that, for some years before the involved claim was filed, shippers' truck drivers delivered the "piggyback" trailers to Carrier's yard, disconnected their tractors and left; when the time came to load such a trailer onto a flat car, drivers employed by Carrier's subcontractor, and not covered by Employes' Agreement, would hitch a tractor to the trailer and load it onto the flat car. There is no evidence in the record that Employes effectively claimed that this freight handling work belongs to them. Employes claimed the work only when straddle-cranes were substituted for tractors in moving the trailers onto and off the flat cars. Carrier argues that the change in the tool used to perform the function did not operate to bring under the exclusive coverage of the Agreement the freight handling which had not theretofore been so covered.

Supplying proof that the involved work as described above, and when handled by cranes rather than by tractors, was intended by the Agreement to be reserved exclusively for Employes is the burden of the Employes; such exclusive right to the work is neither explicit nor implicit in the language of the Agreement, and such right would therefore have to be shown to have been intended by the parties by other competent evidence. Employes did not supply such proof in this record, there is therefore no need to consider the other arguments made in the case.

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 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 15th day of November 1966.

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