Award No. 4598
Docket No. CL-4599

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

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

1. That the Carrier violated the Clerks' agreement when it permitted an outside contractor to enter into an agreement with certain employes under its jurisdiction to perform the work of unloading paper cars, stenciling cartons and reloading paper back in cars using the facilities and equipment of the Lehigh Valley Railroad at Wilkes-Barre, Pa., and

2. That Nelson Blackwell, Louis Petrillo and other employes whose seniority entitled them to perform such work be compensated 3 hours at punitive rates on the following dates paper cars were handled:

October 29, November 7, 9, 14, December 5, 18, 1947. January 1, 26, 27, February 8, 10, 15, March 7, April 12, June 17, 1948 and any subsequent dates paper cars were handled.

EMPLOYES' STATEMENT OF FACTS: The contractor referred to is Mr. A. George Lutz who is a paper broker. The paper is purchased by him from the National Paper Company, located at Ransom, Pa., in car-load lots and shipped from the Ransom Plant to the Lehigh Valley Freight-house at Wilkes-Barre, Pa., where it is stenciled and handled as a less-than-carload shipment. Following is quoted copy of the agreement entered into by Albert E. Hill and A. George Lutz whereby employes are paid five cents (5c) per case:

"A. GEORGE LUTZ PAPER

"October 30, 1947

"Mr. Albert E. Hill,
R. 200 E. Northampton St.,
Wilkes-Barre, Pa.

"Dear Mr. Hill:

"Confirming our telephone conversation, will you please stencil any cars of tissue for us, stencils, brushes and ink to be furnished by us. Price five cents per case.

"Very truly yours

/s/ A. George Lutz."

then placed for handling by the freight house force, the same as would be done with any car containing l.c.l. freight. Between the time such cars were spotted at the freight house and the time of handling by the freight handling force, the shipper arranged to stencil and mark the various packages of l.c.l. freight contained in the cars.

All such work was performed by men in the employ of the shipper and to whom he alone was responsible for payment for service they rendered, and the work performed by the shipper as outlined was during a time and hours when the freight station and freight handling operations were closed. It so happened the shipper in these instances employed men who were employes of the Carrier and regularly assigned to positions in the freight handling force at Wilkes-Barre Freight Station. The work these men rendered in the service of the shipper was during their own time outside of and beyond the hours of the position they held with the Carrier. The contract they made with the shipper to perform his work was a private matter between themselves and the shipper, in which the Carrier was in no manner involved. The work these men employed by the shipper performed did not in any manner infringe upon the rights of employes of this Carrier, nor take away from Carrier's employes any work they had the right to perform. In the stenciling and marking of the l.c.l. shipments, the shipper's employes, in removing any shipments from the cars, returned same to the cars so that when Carrier's employes worked the tonnage in the cars during the course of the normal railroad freight transfer operation, it was handled the same as any other car at the transfer containing l.c.l. freight.

During discussion of this claim with the organization representatives on the property, it was contended by the Employes that the right of Carrier's employes to perform the work in question was contained in Tariff of Exceptions to Official Classifications, Agent C. W. Bains' I.C.C. A-848, which was in effect October 1947, containing Exception to Rule 27, Loading and Unloading Carload Freight, Item No. 1410, which applied to Carrier's freight station at Wilkes-Barre, Pa. It was pointed out to the Employes at the time that this Exception to Rule 27 applied only to the loading and unloading of carload freight, and could not be interpreted to apply in the instant cases. The freight relating to the claim in this dispute was not carload freight, but was l.c.l. freight.

That part of the Employes' claim contained in Item 1, wherein it states Carrier permitted an outside contractor to enter into an agreement with certain employes under its jurisdiction to perform the work of unloading paper cars, stenciling cartons and reloading paper back in cars using the facilities and equipment of the Lehigh Valley Railroad at Wilkes-Barre, Pa., is misleading to the extent that Carrier was in no position to dictate to the shipper the manner in which the shipper would employ persons to perform his work. This Carrier was not a party to any arrangement between the contractor and the men he employed.

If the contention of Employes in this dispute would be acceded to, it would be contrary to all rules and regulations requiring shippers to mark shipments of l.c.l. freight, and would be the granting of a new rule to the class and craft of employes here involved for work which had never been performed by railroad employes, nor even claimed that it was their right to perform.

The Carrier respectfully submits there has been no violation of the Clerks' Agreement in effect on its property with respect to the work involved under this claim and, for the reasons stated, the work in question was not such that would entitle these claimants to perform. Therefore, the claim in this case should be denied.

OPINION OF BOARD: The claim involves certain shipments of packages of paper transported from Ransom, Pa., where there was no station, by ferry or trap car to Wilkes-Barre, Pa. The shipper being a broker instead of the manufacturer, the packages were not marked as to destination at the

factory. The shipper, who was responsible for such marking, arranged to do it at the Wilkes-Barre freight dock maintained by the carrier. He contracted with three employees of the carrier to perform such service for him outside the time of their employment by the carrier. They unloaded the packages from the ferry cars, marked them and reloaded them into such cars so that subsequently the employees of the carrier had to unload the cars and distribute the packages to other LCL cars just as though such marking had been done at the factory.

It is the claim of the Organization that when the Carrier permitted such work to be performed by other than its employees it violated the scope rule of the agreement. It is our view that the scope rule requires the carrier to assign work in the categories mentioned therein and which the carrier performs or is responsible for performing to the employees covered by the agreement. Here the work in question was not performed by the carrier nor was it responsible for its performance. The work was performed by the shipper who was responsible for its performance. The fact that such work was performed on or about the premises of the carrier does not shift the responsibility for its performance and the manner in which it was performed still left all of the work for the carrier's employees which they would have had if the packages had been marked at the factory.

Under such circumstances there is no violation of the scope rule. See our Award No. 4100. The awards cited by the Organization involve work which was the responsibility of the Carrier and which it contracted out or permitted persons not covered by the agreement to perform. Hence they are inapplicable to the situation here.

The fact that those who performed the work under contract with the shipper were employees of the carrier does not alter the situation because they performed it at times other than when required to work by the carrier. The agreement does not give the carrier any right to control the activities of employees outside the hours of their employment so long as such do not affect their ability to perform the duties of their positions with the carrier, and if it attempted any such interference we think the Organization would be quick to object.

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

The Carrier did not violate the agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. TAMMON
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.