Award No. 6543
Docket No. CL-6448

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement at Jamestown, New York, when on July 6, 1951, it refused to permit gang, working under the tonnage or piecework agreement the right to handle a shipment weighing 5300 pounds, and pay said gang for handling this tonnage, but in lieu thereof, permitted individuals not covered by the Clerks' Agreement to unload same from car to consignee's truck, and,

That Carrier shall now compensate H. Bloomquist, Checker; C. Johnson, Caller; W. Dennison and A. Lund, Truckers; for wage loss sustained due to Carrier's action in denying them the right to handle and be paid for handling 5300 pounds at the established tonnage rate. (File 997.)

EMPLOYES' STATEMENT OF FACTS: On July 6, 1951, Car NH 32336, containing miscellaneous LCL Freight, weighing 12,000 pounds, including a crated machine consigned to Jamestown, New York, weighing 5300 pounds, was partially unloaded at Jamestown, New York. The tonnage gang assigned to work the car was composed of H. Bloomquist, Checker; C. Johnson, Caller; W. Dennison and A. Lund, Truckers; which gang was not permitted to unload the shipment and receive credit for the weight for their tonnage earnings. Employes were credited with total of 6700 pounds as against total weight of car of 12,000 pounds. Shipment was checked and arrangements were made to move the freight across platform when the Foreman changed the arrangements and ordered the shipment left in the car. The following day, July 7, 1951, the car was switched to team track and the machine was removed from car by employes of the consignee.

The employes protested this violation of Agreement Rules and the tonnage schedule in effect on this Carrier. Under date of November 9, 1951, Employes addressed letter to highest officer designated for handling employe matters, Employes' Exhibit No. 1. This case was discussed at conference on March 19, 1952, and under date of March 31, 1952, Carrier denied claim, Employes' Exhibit No. 2. Under date of April 2, 1952, Employes replied to Carrier's denial. Employes' Exhibit No. 3, and Carrier denied claim on August 29, 1952, Employes' Exhibit No. 4.

POSITION OF EMPLOYES: This grievance primarily involves the application of Rule 1, Scope and Rule 23, Platform Roster "B" Employes of our current Agreement with the Carrier revised July 1, 1945, amended July 20, 1949, and subsequent amendments, printed copies of which are on file with

destined Jamestown, N. Y., but instead was billed to Falconer, New York, which is 3.7 miles east of Jamestown. In this case the crated machine would have been forwarded to Falconer and unloaded by the consignee without claim from the employes. This is simply a distinction without a difference. It does, however, clearly show that the claim is without merit.

The Carrier has shown that the claimants have been fully compensated for their services in accordance with the applicable Agreement, and submits that they are not entitled to alleged loss of earnings for work not performed.

To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations not agreed upon by the parties to this dispute.

It is, therefore, respectfully submitted that the claim is without foundation under the applicable Agreement and should be denied.

(Exhibits not reproduced. Page reference relates to original document.)

OPINION OF BOARD: Normally the removal of L.C.L. freight from the car by the consignee at a point where freight house or platform forces are maintained must be considered as a violation of the Scope Rule of the Agreement.

Here the Carrier relies upon item 8 of its Piece Work Schedule for Handling L.C.L. Merchandise, which provides:

> "8. Gang will not be paid for freight left in ends of same car when it is not necessary to move or check any part of shipment."

That is a pay rule and does not affect the application of the Scope Rule. If there were any intent thereby to permit persons not covered by the Agreement to remove the remaining freight at that point, it must be assumed that suitable language to express such exception to the scope rule would have been used, just as it was in sub-sections (c), (d) and (e) of the scope rule.

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 Employe involved in this dispute are respectively carrier and employe 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.