Award No. 7199
Docket No. CL-7030

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

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

(1) The Carrier violated and continues to violate the Rules of the Clerks' Agreement when, effective November 18, 1952, it removed from the scope of said agreement the work of handling and checking freight from cars spotted at Grove Street Yard, Jersey City, New Jersey into trailers owned by outside draymen and assigned such work to these outside people who hold no seniority rights under the Agreement terms, and

(2) That the Carrier shall be required to restore the above mentioned work to the scope and operation of the Clerks' Agreement, and

(3) That all employes adversely affected by the arbitrary action of the Carrier shall be reimbursed for any and all monetary losses sustained, retroactive to November 18, 1952.

EMPLOYES' STATEMENT OF FACTS: This dispute centers around the unilateral action taken by the Carrier in the assignment of checking and handling freight from cars spotted at Grove Street Yard, Jersey City, New Jersey, to semi-trailers owned by outside draymen, namely, The Railway Motor Trucking Company.

Grove Street Yard is part of the Carrier's facilities, identified as Hoboken City Freight Station, Jersey City, New Jersey, and included under the supervision of the Carrier Agent in charge thereof, are approximately eighty (80) employes fully covered by the scope and operation of the Clerks' Agreement, falling within the classification of: Foreman, Clerks, Freight Checkers, Telephone Operators, messenger and Freight Handlers.

Since January 1, 1939, the effective date of the current applicable Clerks' Agreement, and up until November 18, 1952, the work of checking and handling of freight from cars spotted at the Grove Street Yard into trailers of the Railway Motor Trucking Co., was properly assigned to checkers

Bold experimentation with new devices and methods seems also to be required in some instances. **The cooperation of employes from top to bottom is a first essential** for determination of where weaknesses lie and for the application of remedial steps. Imagination and ingenuity must be brought to the task.

The responsibility for effecting improvements lies with the railroads. It will be our purpose, however, to furnish such help as may be possible." (Emphasis added)

The present case is very much in point. If the business now moving by rail were to be driven away by the sustaining of the claims here asserted, the employes would gain nothing and both the Carrier and its employes would be the immediate and long term losers.

Certainly it would offend plain common sense to maintain that there was a violation of the agreement under the facts here disclosed, where, had the Carrier refused the request, the effect would be to drive business off the rails and benefit nobody but the railroads' competitors.

It is a play on words to assert that the Carrier is "assigning such work to these outside people" when the cold fact is that the Carrier must respect the wishes of the consignee and its truckman or the business will move elsewhere.

Moreover, at no time on the property, or even now, has any monetary claim been asserted for any identified employe and the claim should be denied for that reason as well. Nebulous claims unrelated to specific individuals and dates should be dismissed as being "too vague, indefinite and uncertain" and too general in nature. See **Award 6339.** Many other awards are to the same effect. But quite aside from the vague and indefinite nature of the claim, there is no rule that supports the claim and the agreement never contemplated application under the circumstances of this case in any event.

In **Award 6001** this Board reiterated its oft repeated declaration that the proper approach to the agreement is not whether it **permits** the Carrier to exercise its managerial judgment but whether it **prohibits** it from doing so.

"* * * We hold that a carrier is allowed to do anything not prescribed or limited by the agreement or by law."

Nothing in the agreement forbids the arrangement out of which this case arose, nor prevents the Carrier from honoring the traditional prerogative of patrons to say how their carload shipments shall be loaded or unloaded. (Compare Third Division Award 6066 and cases cited).

In conclusion, the Board is again respectfully reminded that this is carload freight, traditionally and historically within the province of shipper or consignee to say how it shall be loaded or unloaded, whether at the plant of the patron or at railroad yard tracks of the Carrier. When the shipper, consignee, or his "care of" party assert how they want the freight handled, the Carrier cannot well deny them their rights, particularly where to do so would inevitably drive away the business.

The claim should be denied in all respects.

All data in connection with the above case have been handled with the employes on the property.

OPINION OF BOARD: The claim here concerns the alleged removal of work from the effective Agreement, namely handling of freight into trailers by persons not covered by said Agreement; that is, by the Railway Motor Trucking Company. Request is made that this work be restored to the scope of the Agreement and that all employes adversely affected be made whole for all wage loss sustained.

The locale of this dispute includes an area which includes Pier 41, New York City, and the Grove Street and Secaucus Yards in Hoboken, New Jersey. The Secaucus Yard is approximately four miles more distant from Pier 41 than Grove Street Yard.

Petitioners cite that the loading of freight from cars into trailers when such cars were spotted on the team tracks, Grove Street Yard, had always been done by Company employes but that when Respondent started using team tracks at Secaucus Yard Carrier permitted trucking company employes to perform these duties, which had a dual effect (1) the removal of work (by contract, or otherwise) from the scope of the effective Agreement accompanied by its (the work) performance by employes not covered thereby; and (2) the contravention of Interstate Commerce Commission's Bulletin No. 24451, containing the Rules, Regulations and Charges governing the Handling of Freight in Semi-Trailers, under and by virtue of which the Respondent and not the consignee or trucking company has the responsibility or "say" as to how, and by whom, freight moving to Pier 41 will be handled.

The pertinent part of this Bulletin provides:

"RULE NO. 7. LOADING AND UNLOADING CHARGES

The loading of shipments from trailers (See Note in Rule 5) into car or from car into trailer will be performed by the Delaware, Lackawanna and Western Railroad at Hoboken or Jersey City, N. J., (See Note) for which service a charge of five (5) cents per 100 pounds will be assessed; such charges are to be paid by the shipper on outbound shipments and by the consignee on inbound shipments.

Blocking, staking or otherwise securing freight in or on cars on outbound shipments shall be done by the shipper or at his expense.

NOTE—for operating convenience the Delaware, Lackawanna and Western Railroad, at its option, may transfer the freight to or from trailers (See Note in Rule 5) at New York pier stations indicated in Rule 2, and in such cases the same rates and conditions would apply as if the shipments were handled at Hoboken or Jersey City, N. J."

It was further contended by the Petitioners that the action of the Respondent ran counter to the Awards of this Division, which hold that a Carrier may not contract out work coming within the scope of the Agreement.

The Respondent took the position that its present use of Secaucus Yard team tracks rather than the Grove Street Yard team tracks for the spotting full carload shipments resulted from the consignees' instructions and their (the consignees') decision to use trucking company services in unloading such cars. It was asserted that a consignee has the option, and may at its discretion, decide where full carload shipments are to be spotted and assume the responsibility and expense of unloading same; and, when such action is taken, the Respondent no longer has the right to dictate how or by whom full carload freight will be handled.

Webster's Dictionary defines a team track (railroad) as:

"A sidetrack on which freight cars are placed for loading or unloading by shippers or consignees."

The above definition of a team track, when considered in light of the above quoted I.C.C. Bulletin No. 24451, indicates that when freight is unloaded by the Respondent, it (the Carrier) may charge a 5¢ per hundred pounds tariff or handling charge. However, there is nothing in the Bulletin to

indicate that all freight "must be" or "shall be" handled by the Respondent. The fact that employes handled such freight at the Grove Street Yard at the consignees' request is not controlling at the Secaucus Yard, in those instances where a consignee designates a different method of handling. Certainly in those instances where a consignee instructs the Respondent to load freight into trailers, either at the Grove Street or Secaucus Yard, such work comes under the effective Agreement and belongs to the employes covered thereby. However, a consignee is not required to let the Respondent unload freight consigned to him.

Likewise there are no facts of record upon which to base a conclusion that there exists an Agreement, in writing or otherwise, between the Respondent and a third party (in this instance the trucking company) whereby it (the trucking company) performs the work in question for remuneration from the Respondent and under its direction. Neither is there a showing that when the trucking company performs this service the consignee is required to pay the 5¢ per 100 pounds tariff or handling charge to the Respondent.

Needless to say the existence of an agreement or practice whereby the Respondent compensated a third party (the trucking company) would amount to contracting out work and have the effect of improperly removing work from the scope of the agreement and depriving the employes covered thereby. Also, the collection of the 5¢ per hundred pounds tariff or handling charge from a consignee on freight handled by the trucking company would be contrary to the I.C.C. Bulletin and the effective Agreement because each contemplates that when such charge is made the work belongs to and will be performed by the Carrier.

The absence of facts of record indicating these conditions or circumstances precludes a sustaining award.

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 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 for the reasons set out in the Opinion, the facts of record do not warrant an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1955.