

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 the Carrier violated and continues to violate the Clerks' Agreement:

(1) By improperly allocating the checking and handling of freight from freight cars spotted at Ferry Street Yard, Hoboken, N. J., to outside truckmen not covered by the Agreement terms, and

(2) The Carrier shall be required to properly assign the work involved, to employees covered by the scope of the Clerks' Agreement, and

(3) That the Carrier shall now be required to reimburse all or any employees who are now and who may have been adversely affected, for all monetary losses sustained as a result thereof, retroactive to June 18, 1951, and up until the date this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a freight station at Jersey City, N. J., identified as Hoboken City Freight Station, which deals in the handling of inbound and outbound freight shipments. The instant dispute centers around the manner in which freight arriving in carload lots at Hoboken, N. J., is handled insofar as delivery to various consignees in the New York City area is concerned, via semi-trailer service.

The relevant forces maintained at the Hoboken City Freight Station, fully covered by the scope and operation of the Clerks' Agreement, consist of the following:

- 2 Car Clerks—8 A. M. to 5 P. M.
- 1 Car Clerk—8:30 A. M. to 5:30 P. M.
- 2 Service Clerks—11:00 A. M. to 8:00 P. M.
- 1 Car Clerk—8:30 A. M. to 5:30 P. M.
- 1 Agent's Clerk—8:00 A. M. to 5:00 P. M.
- 1 Claim Clerk—8:00 A. M. to 5:00 P. M.
- 1 Cashier—8:00 A. M. to 5:00 P. M.

In Award 6001 this Board gave as its reason for overruling prior award:

"* * * The latter award appears to be based in part on the premise that a carrier is permitted to do only what the agreement says it may."

The Board then went on to say:

"As stated earlier in the instant opinion we hold that a carrier is allowed to do anything not prescribed or limited by the agreement or by law." (Emphasis added)

Nothing in the agreement forbids the trucking arrangement out of which this case arose nor prevents the Carrier from honoring the traditional prerogative of carload shippers and consignees to say how their shipments shall be loaded or unloaded if they so desire. (Compare Third Division Award 6066 and First Division Awards 6317, 11791, 11792).

The claim should be denied in all respects.

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

OPINION OF BOARD: The claim here concerns the alleged removal of work from the effective Agreement by the Respondent when freight was handled by a trucking company at Ferry Street Yard, Hoboken, N. J. Request is made that this work be restored to the scope of the effective Agreement and that all employees adversely affected be made whole for all wage loss sustained. The Respondent contends that the circumstances surrounding the manner of handling the freight in question do not constitute either removal of work from the scope of the effective Agreement or the performance thereof contrary to the terms of said Agreement.

The issue here is the same as that presented in Award 7199, decided this date. We held in that case that the Petitioners failed to sustain the burden of proving a violation. The evidence here presented is substantially the same as that presented in Award 7199 and, for the reasons set forth in that Award, requires a similar finding.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

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.