Award No. 8497
Docket No. CL-8162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerical Agreement:

1. When on January 10, 1955, the Carrier permitted and required employes not within the purview of the terms, provisions and rules of the Clerical Agreement, to perform the duties and work, in connection with loading and unloading freight containers (vans or trailers) onto and off of freight cars, at 4th St. & Erie Avenue Freight Station, Philadelphia, Pa.

2. That the Carrier be required to compensate at punitive rate, the senior available employe or employes, under the Clerical Agreement for all time required in performing duties and work, outlined in Claim No. 1.

3. That the Carrier be required to enter into a joint check and agree upon the amount of time involved, rate of pay, and employes necessary in the performance of the duties and work, as outlined in Claim No. 1.

EMPLOYES' STATEMENT OF FACTS: On January 10, 1955, the Reading Company inaugurated truck-trailer service, between Philadelphia, Pa., Camden, N. J. and Chicago, Illinois. While this was initially scheduled to begin January 1, 1955 actual operations did not take place until January 10, 1955. The clerical employes having previously observed that it was apparent due to initial tests and conversations with local officers that other than clerical and related employes would be utilized in the performance of the operations, duties and work in connection with the newly established motor trailer service. The clerical employes contacted their representatives with the view of correcting and protesting the assignment of duties under the Clerical Agreement to other employes. The clerical employes contended that the duties assigned to employes of the Reading Transportation Co. and not employes of the Reading Company duties which had for years been

burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper." (Emphasis supplied.)

To the same effect are Awards 4274, 6001, 6002, 6018, 6075 and many others.

Part 2 of the Organization's claim is a request that Carrier be required to compensate at punitive rate the senior available employe or employes under the Clerical Agreement, whoever they may be, for all time required of truck drivers in loading and unloading trailers on flat cars. This, in Carrier's opinion, would be an unnecessary and unwarranted penalty payment which is directly opposed to Carrier's responsibility of operating efficiently and economically in the interest of its patrons, and has no basis under Carrier's agreement with the Clerks' Organization.

Part 3 of the Organization's claim, requesting a joint check and agreement as to the time involved, rate of pay and employes necessary in the performance of work of loading and unloading trailers on flat cars, likewise has no basis under the rules of the Carrier's agreement with the Clerks' Organization. As Carrier has pointed out hereinbefore, work in question has never been negotiated under the terms of the Clerks' Agreement.

Under all the facts, evidence and circumstances presented hereinbefore, it is Carrier's position that the Organization's claim is unwarranted and without merit and Carrier respectfully requests that the claim be denied in its entirety.

This claim has been discussed in conference and handled by correspondence with representatives of the Clerks' Brotherhood.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The claim of the Organization here, as in Award No. 8496, Docket CL-8132, argued jointly involves the so-called "Piggy Back" operation. There the gravamen of the claim involved the tying down, bracing, jacking up, and blocking, as well as the untying, debracing, de-blocking, jacking down, and related operations. Here the moving of the Vans and Trailers on and off the freight cars, is the issue.

The facts are not in dispute. In January, 1955 the Carrier inaugurated "Piggy Back" service. Prior thereto the Claimant filed written notice that it claimed work in connection with the projected operation. The claim was made under the scope section of the contract. The Carrier denied the claim. While the claim might have been stronger if both the loading and the tying were presented as a single claim rather than broken down into Dockets CL-8132 and CL-8162, it is felt that if that had been the case, the result would be the same. The claims were presented so nearly simultaneous that they were considered as both joint and separate.

The deciding factors are not questions of rates, less-than-carload shipment, etc., but rather:

1. Has the work in question been contracted to Claimant under the contract and its Scope Sections of the Contract?

2. Is the work of such a nature that it is the exclusive property of the Claimant?

3. Has the Claimant performed this work in the past in such a manner and for such a period that it has exclusive jurisdiction thereof?

4. Is the work an extension of the former work of the Claimant so that it has exclusive claim thereto?

The answer to these questions being in the negative, the Claimant Organization has failed to carry its burden in support of the claim, and the claim must fail.

Attention is invited to Award No. 8496, in Docket CL-8132, where the primary claim to work of the Claimant for Freight Handlers, Truckmen, Stowmen, Hookers-on, etc., was defined as inherent in the movement of freight. Where the Carrier was called upon to move the freight to the freight car, there its securing, tying, bracing, etc., being incidental to that operation, all in order to place the freight in final form for shipping, was the work of the Claimant. If at a later time this incidental tying down, bracing, blocking, etc., whether performed by the Carrier or shipper, was found to be inadequate, then the Carrier would remedy the inadequate tying down, bracing, blocking, etc., by others not the Claimant. Thus tying down, bracing, blocking, etc., is not exclusively the work of the Claimant by custom, practice, contract, or scope rule. It becomes this work only when connected with **movement.** Movement on, or movment off the freight car or company property by the Carrier. As in Award 1626 (Second Division), it must be coupled to be exclusive, otherwise it is not inherent in one craft. That is not the case here.

We are then brought to the principal or gravamen of the claim. Who should place the trailer physically on the flat car? The answer is the Claimant **only** if it falls within their scope rule of the contract. They load what freight the Carrier has to load. They unload what freight the Carrier has to unload. They do it only if the Carrier does it, and the Carrier does it only if the economic flow dictates this be done by the Carrier. There are times such as here, that the realities of commerce dictate that this be done by the shipper. When shippers use crates, or containers, or drums, the Carriers **may** do the loading. But there is a distinction between trailers and vans, and other types of containers.

The distinction between trailers and vans, as used in the "Piggy Back" operation, and containers, crates, and drums in other freight operations, is that trailers and vans are self-loading. The economic movement or flow of traffic forms a natural economic collation from the shipper's premises until it ends up on the flat car without requiring outside assistance from the Carrier. In the handling of other container freight, the Carrier provides the movement from the shipper's dray to the Carrier's rail platform thus breaking the coherent nature of the operation. The labor involved is material, here there is no additional labor involved.

The method of performing the work is not in question. This is not an improvement on old methods as such. The case is not before us, but should it be necessary for the Carrier to unload this trailer, it would seem, without question that it would be the Claimant's work. But here the work is the shipper's work, not the Carrier's.

Necessary Third Parties.

Once again the question is raised of necessary third parties. This has been thoroughly discussed in Award No. 8496, Docket CL-8132, and will not be repeated here. The mere claim of necessary third parties does not raise the issue. The Award does not compromise the rights of any third party and could only do so if found that the work, in whole, or in part, belonged to Claimant. We have not so found.

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 the claim is dismissed in accordance with Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1958.