Award No. 13287

Docket No. GL-13362

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5135) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, by requiring and permitting employes of the Penn Truck Company to load line unit, or over-the-road, trucks or trailers, in lien of the Carrier's Freight Truckers, at the Freight Station, Fort Wayne, Indiana, Northwestern Region.

(b) Claimants S. Brown, N. Jimmerson, R. Jordan, M. Hollins, H. Butler, J. Wright, W. Childers, A. Brewer, L. C. Hill and R. L. Wilson, Extra Truckers, be allowed eight hours pay a day, retroactive ninety days from May 19, 1958, or to February 19, 1958, and all subsequent working days until the violation is corrected. (Docket 882)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the Employes' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Employes claim that at the Fort Wayne Freight Station the assignment to truck drivers employed by a trucking company of the work of loading freight onto the trucking company's trucks and trailers, when the freight is being transferred to the trucks in the course of inter-city shipment, violated the Agreement. According to the Employes, this work is decisively distinguishable from the same kind of work when the freight involved is being loaded into the trucks for intra-city delivery; in the latter case, the Board found in 1937 in Decision No. 209 of The Pennsylvania Railroad Clerical and Miscellaneous Forces' Board of Adjustment, and confirmed in 1949 (after the effective date of the currently involved Agreement) in Award No. 4388, that such loading work was not intended to be reserved to the Employes by the Agreement between the parties.

Decision No. 209 decided the meaning in the Agreement of the phrase "freight truckers" (which appears in the currently involved Agreement as "Truckers—Freight or Baggage") by determining the intent of the parties in the light of the circumstances existing at the time the Agreement was negotiated. Examination of that decision will show that the fact that the work in that dispute was performed in connection with pick-up and delivery service (intra-city) was not a decisive circumstance for the decision. Decision No. 209 says:

> "* * * The problem is one of construction—what is the true meaning of the term 'freight truckers' as used in the schedule?
>
> The pick-up and delivery service was inaugurated to enable the carrier to compete with motor trucking companies. Economy of operation is essential to successful competition. Obviously, the freight cannot be moved to the tailboard until the motor vehicle is backed to the platform. If the operation is performed by railroad employes, the trucking company employes must remain idle, at least part of the time. Such duplication of effort must inevitably increase the costs of the carrier and reduce its efficiency. **It was hardly within the contemplation of the parties in drafting the regulation that the less economical of the two possible methods of handling this freight operation should be followed. Only the plainest language would justify such a conclusion and such language is not to be found in the schedule** * * * the movement of the freight from the platform to the tailboard by the drivers and helpers of the trucking company * * * is entirely consistent with the letter and spirit of the schedule of regulations * * *." **(Emphasis ours.)**

As we recently found in our Award No. 12923, the fact that the instant case involves freight in transit from station to station (inter-city) and the freight involved in Decision No. 209 did not, establishes a distinction which need not lead us to a different conclusion. It is not claimed that the plain language said by Decision No. 209 to be needed to justify a different conclusion was introduced or is to be found anywhere in the currently involved Agreement. Employes have failed to prove that the involved work has been performed exclusively by and is reserved to them. The work is incidental to the major duties of the truck drivers employed by the trucking company and

Carrier may permit it to be performed by them without violating the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.