

Award No. 3634

Docket No. TE-3614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Agent-telegrapher Ray Grate, Tillamook, Portland Division, is entitled to payment of commissions for the handling of milk and cream by service substituted for that of the Southern Pacific Company in accordance with the provisions of the Milk and Cream Agreement negotiated January 1, 1939.

EMPLOYES' STATEMENT OF FACTS: The handling of milk and cream, including the billing and accounting, has been and is an assigned duty of the agent at Tillamook, Oregon.

Milk and cream shipments move between Tillamook, Oregon, Portland, Oregon, and Forest Grove, Oregon, via Pacific Truck Express, all shipments being delivered to and received at Southern Pacific station at Tillamook. The bills of lading are signed by the agent of the Southern Pacific Company at that point and the agent makes waybills covering these shipments and in addition performs the accounting incidental thereto.

The Pacific Truck Express is a wholly owned subsidiary of the Southern Pacific Company and is being used as substitute service as defined in Article 1 of the Milk and Cream Agreement in effect on this property, a copy of this Milk and Cream Agreement being on file with your Board.

POSITION OF EMPLOYES: Exhibits "A" to "O" inclusive are shown as part of this submission.

Claim is filed under the milk and cream agreement which was negotiated between the parties to this dispute and signed January 1, 1939.

The claim of the committee is that the Pacific Truck Express, a wholly owned subsidiary of the Southern Pacific Company, Pacific Lines, is substituted service as contemplated by Article 1 of the milk and cream agreement, which we quote for ready reference.

"ARTICLE 1

**Commodities and mode of transportation subject
to the provisions of this Agreement**

This Agreement applies only to shipments of the following designated commodities, when waybilled and shipped in baggage service or substituted service, as provided for in Southern Pacific Company (Pacific Lines) tariffs (other than freight tariffs) that the company has now in effect, or may hereafter make effective, which are published for the transportation of such service of the

shipper) for transportation in privately owned trucks. When baggage service did not previously exist then, regardless of the transportation service that was established, such could not be substitute service for baggage service.

With regard to the second point: The transportation service of the Pacific Truck Express, during the period involved, from Tillamook to Portland, is not provided for in Southern Pacific Company (Pacific Lines) tariffs. As set forth in the foregoing statement of facts, the tariffs of the Pacific Truck Express are separate and distinct from Southern Pacific Company (Pacific Lines) tariffs, and bear no relationship whatever to Southern Pacific Company (Pacific Lines) tariffs; furthermore, the petitioner has conceded that the milk and cream shipments involved were waybilled and moved under tariff other than Southern Pacific Company (Pacific Lines). See Exhibit B.

Examination of the correspondence submitted to representatives of the Carrier by representatives of the petitioner, coupled with the statement of claim, clearly establishes that it is the petitioner's position that had baggage service existed on the Southern Pacific Company (Pacific Lines) between Tillamook and Portland, the milk and cream transported during the period involved via Pacific Truck Express would have been transported via said baggage service. Whether such be the case is strictly a matter of conjecture; however, it is entirely immaterial to the instant case, for the fact remains that no baggage service existed between Tillamook and Portland over the Southern Pacific Company (Pacific Lines). The petitioner's allegation with regard to the relationship between the Pacific Truck Express and the Carrier is likewise entirely immaterial.

The Carrier submits that the foregoing conclusively shows that the claim in this docket is not supported by the agreement of January 1, 1939

CONCLUSION

The Carrier having established that the claim in this docket is without basis respectfully submits that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

OPINION OF BOARD: The question raised by this claim may be stated in the following language: When it is all boiled down all we are required to decide is whether the service which is the basis of this claim is substitute service as provided for in the above cited Milk and Cream Agreement.

The referred to provision of the Milk and Cream Agreement reads:

"ARTICLE 1

"Commodities and Mode of Transportation Subject to the Provisions of This Agreement

"This agreement applies only to shipments of the following designated commodities, when waybilled and shipped in baggage service or substituted service, as provided for in Southern Pacific Company (Pacific Lines) tariffs (other than freight tariffs), that the company has now in effect, or may hereafter make effective, which are published for the transportation in such service of the commodities hereinafter described, either in carload or less-than-carload lots, viz:

"COMMODITIES

"Milk	Skimmed Milk
Cream	Concentrated Milk
Sour Cream	Cottage Cheese
Buttermilk	Pot Cheese
Condensed Milk	Unflavored Ice Cream Mix
Evaporated Milk	Butterfat."

That agreement was, according to its preamble, made "in compliance with, in full satisfaction of and in discharge of the obligations imposed on the parties to this agreement by Award 313, Docket TE-202, of the National Railroad Adjustment Board, Third Division, dated Chicago, Illinois, October 8, 1936." The award remanded the case back to the parties for further handling.

The dispute presented by that case was a claim that employees who were paid commissions on shipments of milk, cream and related commodities handled by express, were entitled to be paid commissions for handling like shipments by baggage. The award in that case bears date of October 8th, 1936.

Another dispute between the parties was being handled at the same time as Award 313, Docket TE-202. That case bore Docket No. TE-203, and was also disposed of by remand for further handling by the parties. That was done by Award No. 316, dated October 13th, 1936.

The claim presented by Docket TE-203, Award 316, was that telegraphers required to handle the business and accounts of the Pacific Motor Transport Company be paid additional compensation therefor. The Pacific Motor Transport Company is a wholly owned subsidiary of the Carrier, and the Pacific Trucking Express is a wholly owned subsidiary of Pacific Motor Trucking Company.

At the time, therefore, of the promulgation of the Milk and Cream Agreement there was before the parties for disposition the precise and exact claim that is here, to-wit: additional compensation for handling the business of a wholly owned subsidiary trucking line of the Carrier. And yet, not only does the preamble of the agreement confine its operation to the obligations of Award 313, no reference whatsoever is made in Article 1 to the tariffs of trucking lines owned by Carrier as a basis for fixing compensation.

If it had been the intent of the parties to have included trucking lines as "substituted service" of Carrier, language to that effect might well have been employed. And this is especially true with the question raised by the claim advanced in Award 316 remaining unanswered by the parties for more than two years at the time of the making of the agreement.

Since the agreement does not contain language suitable to sustain the claim this Board may not supply it.

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 parties waived oral hearing thereon;

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 the agreement is not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.