

Award No. 7194
Docket No. CL-7131

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated the Agreement at Riverside and San Bernardino, California, between March 16, 1951, and October 1, 1953, when it removed the work of selling its tickets and Pullman reservations from the scope and operation thereof, and turned this work over to employees of the Pacific Electric Railway Company, not covered by the Agreement; and,

(b) That the senior qualified available unassigned employee on the Passenger Traffic Department Roster No. 5 be compensated eight (8) hours at straight time rate, or in the event no unassigned employee is available, the senior assigned Passenger Traffic Department employee at Colton, California, eight (8) hours at time and one-half rate under the provisions of the Call Rule, each date between March 16, 1951, and October 1, 1953.

NOTE: Actual monetary consideration involved in this claim to be determined from a joint check of the Carrier's payrolls, records, etc.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, bearing effective date of October 1, 1940, which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claim. The Agreement was amended and/or revised by a Memorandum of Agreement dated July 8, 1949, and supplement thereto dated June 30, 1950, which became effective September 1, 1949, to conform with the National Forty-Hour Work Week Agreement signed at Chicago, Illinois, March 14, 1949. Copy of Agreement of October 1, 1940, and subsequent amendments and/or revisions are on file with this Board, and by reference thereto are made a part of this dispute.

1. For many years prior to February 1, 1951, Carrier maintained ticket offices at Riverside and San Bernardino, California, which cities are each

Rule 1, the Scope Rule, specifies the classification of employes who, because of the nature of their duties, come within the scope of the agreement rules.

The practice of the Pacific Electric Railway selling carrier's tickets at points where the Pacific Electric Railway is the originating railroad (into and from which the carrier has no passenger service), as hereinbefore established, dates as far back as May 1916, antedating the current and preceding agreements, therefore, if the rule needed any revision it should have been revised at the time the original agreement was written and each subsequent rewriting of the agreement.

Rule 20, known as the overtime rule, provides for the compensation of employes covered by the current agreement who are required to work in excess of 8 hours on any day, in excess of 40 straight-time hours in any work week, or more than five days in a work week. It obviously lends no support to the instant claim.

Rule 21 of the current agreement outlines the method of compensating employes coming within the scope of the current agreement when they are notified or called to perform work not continuous with regular work period; or when said employes are required, after completion of their regular tour of duty and subsequent to the time released therefrom, to return for further service; or when required to report for duty in advance but continuous with regular work period; or to perform service on Sundays, week-day, off days or holidays. Since none of the conditions set forth in Rule 21 are here involved this rule does not in any manner support the claim in this docket.

Rule 26 of the current agreement provides for the establishment and termination of seniority; it obviously does not support the claim in this docket.

Rule 27 of the current agreement sets forth the basis for promotion. Since promotion is in no way involved in the instant claim, Rule 27 is of no value to the petitioner.

Rule 33 provides for the advertising and assigning of new and vacant positions coming within the scope of the current agreement. There is no dispute here with respect to advertising positions or assignments thereto; obviously, Rule 33 does not support the claim.

Rule 69 sets forth the effective date of the current agreement and method of making changes therein. Such a change in rules of the current agreement is not involved in the instant docket, Rule 69 is in no way applicable.

Awards 2387, 2988, 3904, 4161, 4698, 5014 and 5878, of this Division also cited by the petitioner, do not involve circumstances analogous to those in the instant dispute, and are not applicable thereto.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, request that said claim be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim that the Scope Rule of the Agreement covers the discontinued sale of tickets in two of its off-line offices closed by the Carrier.

Southern Pacific operates no passenger service to or from Riverside or San Bernardino, each of which is located approximately eight miles from Colton on Southern Pacific's main line. Pacific Electric Railway Company always maintained passenger service between Colton and Riverside, San Bernardino and other points.

Prior to February 1, 1951 Southern Pacific maintained ticket offices at Riverside and San Bernardino, employing only one ticket clerk in each of these offices, both of whom were members of the Clerk's Organization and both of whom were apparently on an appropriate seniority roster.

Throughout the life of the Agreement by arrangement between the two carriers, Pacific Electric has sold tickets for transportation over Southern Pacific's lines at various points where Pacific Electric was the originating carrier except at Riverside and San Bernardino when Southern Pacific maintained the two ticket offices of its own there. From March 16, 1951 to October 1, 1953 a corresponding arrangement was put into effect at Riverside and San Bernardino when Southern Pacific closed its two ticket offices there.

It does not appear from the record that during the period under claim Pacific Electric sold any tickets other than those in which Pacific Electric was the originating carrier.

FIRST. The Scope Rule in this Agreement is general in character: it does not expressly confer upon Clerks the exclusive right to perform all clerical work; nor does it invariably prevent the removal of positions from its application except as provided by Rule 69 (compare Awards 5240, 5623, 6216 and 7047).

However, practice under a Scope Rule such as this generally determines the extent of the coverage; but this does not mean that all positions in existence upon execution of the Agreement are frozen, regardless of their source. A familiar example is the "ebb and flow" of clerical work between clerks and other employes of a carrier.

The essential question presented here is, not merely whether this was Clerks' work within a particular seniority roster, but the larger question whether the work was the exclusive business of Southern Pacific. The Scope Rule cannot fasten on work which does not belong to Southern Pacific, unless Southern Pacific has assumed the responsibility for its performance.

SECOND. Generally speaking, the Agreement covers all clerks' work which is the business of Southern Pacific. If the work is inherently the business of Southern Pacific, on familiar principles it cannot be removed from the proper application of the Scope Rule by the device of "farming out to strangers"; but if the work is or becomes the business of some other carrier and Southern Pacific has, gratuitously or by contract, been assuming the responsibility for its performance, Southern Pacific may discontinue the work whenever the responsibility for its continued performance ends.

THIRD. Southern Pacific is under no obligation to maintain off-line offices; and originating carriers are just as much if not more entitled than Southern Pacific to sell these tickets. The ticket selling in dispute here was the joint business and concern of both Pacific Electric and Southern Pacific; and since Southern Pacific was the off-line carrier, the tickets sold were the primary business and concern of Pacific Electric.

In this view Southern Pacific was at liberty to terminate its gratuitous responsibility for the maintenance of its off-line ticket offices at Riverside and San Bernardino and to abolish the clerical positions there. In other words, the Scope Rule in this Agreement was commensurate with the off-line responsibilities which Southern Pacific elected from time to time to assume or to relinquish to the originating carrier at Riverside and San Bernardino.

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 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

The Agreement was not violated.

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.