

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 assigned employee on Roster 4 in the Colton, California, area, be compensated at time and one-half rate under the provisions of the Call Rule each date from March 16, 1951, to October 1, 1953, between the hours of 5:00 P. M., to 10:45 P. M.

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 approximately eight miles away from the city of Colton, California, situated on Carrier's main line to the East.

In the circumstances the service involved in this dispute was properly service performed by Pacific Electric Railway, and current agreement between carrier and its employes represented by petitioner is not involved.

In handling the dispute on this property, the petitioner's general chairman relied upon Rules 1, 20, 21, 26, 27, 33 and 69, of the current agreement, and Awards 2387, 2988, 3094, 4161, 4698, and 5014 of this Division, in support of the claim.

The service here involved being that of Pacific Electric, neither the current agreement nor Rule 1 (Scope Rule) are involved.

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. Payment for overtime worked is not here involved and Rule 20, therefore, 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. Since 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, and 5014, 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, requests 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: It is here alleged that the Respondent acted in contravention of the Agreement when the duties of selling tickets were

permitted by it (the Respondent) to be sold at certain points by the Pacific Electric Railway Company. Reparations are sought in the form of a Call, at the punitive rate, for the senior qualified employee, Roster 4, Colton, California, from March 16, 1951 to October 1, 1953, between the hours of 5:00 P. M. and 10:45 P. M.

The effective Agreement bears the date of October 1, 1940, as amended September 1, 1949.

The locale of this dispute is Riverside, San Bernardino, and Colton, California. While neither Riverside nor San Bernardino are on the Respondent's line, ticket offices were maintained at each point prior to February 1, 1951, the office in each city being staffed by one ticket clerk. On this date, that is, February 1, 1951, these offices were closed. When this was done, a telephone order office was established at Colton. Colton was on the Respondent's line. This office was staffed by two information clerks who took orders for passenger tickets from patrons in the Riverside-San Bernardino area on a "will call" basis. The tickets so ordered were issued by ticket clerks stationed at Colton.

On March 16, 1951, the Pacific Electric Railway started selling and issuing Respondent's tickets at both Riverside and San Bernardino. It is this activity that forms the basis of the Petitioner's assertion that work coming within the scope of the Agreement was improperly removed therefrom and performed by employees not covered thereby.

The primary question for resolution here is whether the selling of the tickets in question was the exclusive business of the Respondent, and as such belongs under the Scope Rule of the Agreement to an extent that the same, under no circumstances, could be performed by a third party. If such work is the exclusive work of the Respondent, its (the work) performance by a third party amounts to an improper contracting out thereof and a resulting violation of the effective Agreement.

The offices in question were "off line offices". A third party carrier (Pacific Electric Railway Company) had always maintained service to the Respondent's main line junction at Colton. The record is clear that all tickets sold by the Pacific Electric Railway Company were as originating carrier. There is no evidence that they ever sold tickets to points where they were not the originating carrier (from San Francisco to Dallas, for instance).

The ticket business at issue here was "off line" business and as such was properly performable by the Pacific Electric Railway Company so long as the Respondent had no objection to honoring same and the accounting therefor (tariff-wise) was satisfactory. Certainly the Respondent was free to open and maintain "off line" ticket offices. When this was done, the work was that of the Respondent and belonged to the employees covered by the effective Agreement, but also it was free to close such "off line" offices at its discretion and abolish the clerical positions attached thereto. The Scope Rule here being general in nature, the coverage of the work in question was dependent upon the Respondent's decision to reopen and assume the ticket selling in question. It was not in contravention thereof (Scope Rule) for the Respondent to close such offices and relinquish the ticket selling work to an originating carrier.

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

That the effective Agreement was not violated.

AWARD

Claims 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.