

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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 and continues to violate the Rules of the Clerks' Agreement at Lindsay, California, when on April 12, 1952, and on subsequent dates thereto, it removed the clerical work of sealing cars from the scope and operation of the Clerks' Agreement and assigned such work to Conductors, employees not covered by its terms; and

(b) That Cashier-Clerk John D. Webster, and/or his successors, be compensated under the provisions of the Call Rule for April 12, 15, 16, 17, 21, 22, 23, 25, 28, 29, 30; May 1, 8, 9, 12, 13, 15, 16, 20, 21, 23, 27, 28; June 9, 11, 17, 1952, and each and every subsequent date that he is not called and used to perform the work of sealing cars at Lindsay, California, which work is regularly assigned to him during his work week, when Conductors, employees not covered by the Clerks' Agreement, are required to perform such service.

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 40-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 hereby made a part of this dispute.

1. Carrier's station at Lindsay, California, is located on a branch line of the San Joaquin Division, commonly referred to as the Porterville Branch. Lindsay is thirty-one miles from Tulare, which city is on Carrier's main line, a distance of 250 miles from San Francisco, California, Carrier's General Office headquarters.

The awards relied upon by the petitioner do not involve circumstances analogous to those in the instant dispute, and are not applicable thereto.

The carrier submits that the work which is the subject of this dispute is not reserved to employes coming within the scope of the agreement covering clerks by any provision of the current agreement, and that the performance of said work by others than those covered by said agreement did not contravene any provision of the current agreement.

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, if not dismissed, 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 claim is based on the contention that the sealing of cars at Lindsay, California, a station on Carrier's system, has been for many years, at this point, the exclusive work of employes covered by the Clerks' Agreement with Carrier.

The claim came into being by the use of conductors to perform this work during hours when Claimant was off-duty and it is contended that such practice constituted a removal of work from the scope of the Clerks' Agreement.

Respondent Carrier denies the contention and alleges that the work in question has been performed by three other crafts, notably, telegraphers, conductors and brakemen.

The record reveals several affidavits made during the pendency of this claim and a study of the same and other evidence presented therein leads to the conclusion that over the years the work has not been performed or considered exclusively that of clerks.

The reverse seems to have been the accepted practice and we are of the opinion that the rules of the Agreement did not intend that the work would be considered exclusively the work of clerks under the fact situation here presented.

A jurisdictional question is presented which will not have our consideration in view of the opinion above stated and on the awards of this Division on the same subject.

On behalf of the parties considerable argument has been presented on the proposition of accepting awards of Special Adjustment Boards as a basis to govern our holdings. Also a question arises to the effect that awards cited were not considered originally on the property or cited in the record made coming to us.

The record before us, in our opinion, gives a clear answer to the problem presented and we do not deem it necessary to go into these cited awards of such Special Adjustment Boards in arriving at a solution of this controversy.

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

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.