

Award No. 10736

Docket No. CL-9766

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Jerome A. Levinson, Referee**

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**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 the 24th Street Sub-Agency, Los Angeles, California, when it removed the work of LCL billing from the scope and operation of the Clerks' Agreement and assigned such duties to employees of another class or craft, and

(b) That the work of LCL billing be restored to the scope and operation of the Clerks' Agreement; and

(c) That all employees adversely affected; namely Charlotte Trower, Mary F. Butler, Jewel Mowrey, Anne Sesto, Frank Hodson, Jean Peterson, Marilyn Messenger, Elsie Ingersoll and Bessie Cuthbert, and/or their successor or successors, if any, LCL Billers, be compensated an equal proportionate share of sixteen (16) hours at the applicable piece work rate \$1.5725 per 100 waybills and arbitrary allowance of \$1.315 per hour (subject to National Wage Increase effective November 1, 1956) for all waybills and service performed by employees not covered by the Clerks' Agreement for March 1, 1956, and for each and every date thereafter until the Agreement violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** 1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. The Pacific Motor Trucking Company, incorporated under the laws of the State of California to conduct and carry on the business of transporting freight, is a wholly owned subsidiary of the Carrier operating

Furthermore, the petitioner's repeated attempts to secure a rule covering operation of teletype machines vividly illustrates the absence of such a rule from the current agreement. The authority of this Board is limited to interpreting the rules agreed upon by the parties, and in this case there is clearly no rule to interpret.

While petitioner has referred to Memorandum of Agreement of January 25, 1955 (Carrier's Exhibit "A") in its handling on the property, as allegedly supporting its contention, such Memorandum of Agreement did not nor was it in any respect intended as an exclusive allocation of any work, as may readily be determined by review of the agreement itself.

### CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests, in the event the Board decides to assume jurisdiction, that said claim 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.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to 1955, at freight stations and other offices on its property, Carrier provided clerical work including LCL billing for Pacific Motor Trucking Company, a wholly owned subsidiary whose operations included pick up and delivery of LCL commodities. At Carrier's freight station at 1281 North Spring Street, Los Angeles, California, clerical employees performed LCL billing on a piecework basis, for which they were paid an arbitrary allowance of \$1.315 per hour (subject to National Wage Increase effective November 1, 1956) and \$1.5725 per 100 manifold type waybills which traveled with trucks to destination. Also, according to Carrier, on its property Telegraphers prepared and transmitted waybills by means of teletype machines, although the record does not establish that they did this at the Spring Street Freight Station prior to 1955.

Pacific Motor Trucking Company acquired operating rights and property of Pacific Freight Lines and, pending approval by the California Public Utilities and Interstate Commerce Commissions, Carrier and Employees entered into the following Memorandum of Agreement on January 25, 1955 applicable to new employees at a Sub-Agency of the Spring Street Freight Station to be established at 24th and Alameda Streets located approximately three miles distant. The Agreement became operative on September 14, 1955.

"MEMORANDUM OF AGREEMENT  
between  
SOUTHERN PACIFIC COMPANY (Pacific Lines)  
and  
its employees represented by  
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

\* \* \* \* \*

It is anticipated Southern Pacific Company (Pacific Lines) may in the near future establish Sub-Agency of Los Angeles Freight Station hereinafter referred to as 24th Street Sub-Agency.

When and if the Company establishes the Sub-Agency referred to the following shall govern:

1. Provisions of rules included in Article VIII of Clerks' Agreement are waived to the extent that employees included in initial organization as established within five (5) days of date of initial operation of 24th Street Sub-Agency may be placed and assigned without regard to advertisement, assignment and displacement rules of Article VIII, such rules to apply to new positions created or vacancies arising subsequent to the five (5) day period referred to.

2. All employees assigned in initial organization as referred to in Paragraph 1 shall establish a seniority date as of the first date of the initial operation of the 24th Street Sub-Agency. The Company will furnish the General Chairman a list showing the names of such employees and positions to which assigned, and Rule 26(a) shall be waived to the extent that the order of employees on such list shall establish the seniority rank of such employees.

3. Position of Chief Clerk, 24th Street Sub-Agency shall be added to Addendum No. 1 to current agreement.

4. The names of employees included on list referred to in Paragraph 2 shall be designated on Los Angeles Roster No. 3 with the Symbol 'X'. Employees whose names are so designated shall have preference over other employees for new positions and vacancies on positions located at 24th Street, and shall not be subject to displacement from positions located at 24th Street except by employees of higher seniority rank whose names are designated by Symbol 'X'.

5. Attached list reflects classification and rates of pay of positions in conformity with Rule 5 of current agreement, which it is tentatively planned may be established."

The attached list included "LCL Biller (17) -----\$14.74".

According to Employees, shortly after September 14, 1955 Carrier progressively commenced sending shipping orders and/or bills of lading, for commodities destined to San Francisco and certain other California and Arizona points, to the Spring Street Freight Station and required Telegraph Operators there, not covered by the Clerks' Agreement effec-

tive May 1, 1940, "to bill the commodities from either the shipping orders or bills of lading. . . to transmit this billing on teletype machines" — "to perform the duties heretofore performed by LCL Billers covered by the agreement and assigned at the sub-agency". As a result, Employees claimed, the force of LCL Billers at the 24th Street Sub-Agency was reduced to 15 from 17 positions initially listed, while the force of Telegraphers at the Spring Street Freight Station was increased by 5 to handle the work brought from the sub-agency; also, due to increased volume the force at the latter location otherwise necessarily would have been increased.

According to the record, Clerks at the 24th Street Sub-Agency continued to prepare waybills for split shipments, involving several locations enroute and representing approximately 10% of the business. These then were taken to the Spring Street Freight Station for teletype transmission to destination. This situation occasioned no part of the dispute. However, as to straight shipments, amounting to 90% of the business at the sub-agency, Clerks now made no waybills from shipping orders; instead, the latter were sent to the Spring Street Freight Station where Telegraphers "were required to waybill these shipments". This unilateral action, Employees claimed, constituted a transfer to Telegraphers, three miles distant, of work reserved to Clerks at the sub-agency by the Agreement operative September 14, 1955, and a violation of that Agreement which, Employees asserted, assigned specifically and exclusively to these Clerks all of the billing of LCL commodities at the sub-agency for Pacific Motor Trucking Company, regardless of the destination of the commodity. Furthermore, Employees claimed, Carrier's action violated Scope Rule 1 of the Clerks' Agreement governing the hours of service and working conditions of Clerks — clerical workers and machine workers, as defined in Rule 2 — since the 1955 Agreement placed all employees affected by it, their positions and work attached thereto — thus, making waybills — within the scope and operation of the Clerks' Agreement. Employees urged that this action did not fall within the principle that a Telegrapher may be assigned clerical work which is incidental to or in proximity of his telegraphic work, to fill out his telegraphic assignment, but that it did violate the principle that the clerical work may not be brought to him to perform.

On the property, Carrier denied the claim, stating on appeal, "the performance of duties involved by employees of another craft in accordance with long standing practice, does not contravene any provision of the Clerks' Agreement". Employees disputed this position on the grounds that the matter involved new work, covered by a special agreement, to which any past practices could not relate.

Before the Board, Carrier argued, first that the Board lacked jurisdiction because the matter involved a trucking carrier subject to the National Labor Relations Act; second, that even if the Railway Labor Act were applicable, the matter involved work being performed by employees covered by the Telegraphers' Agreement with Carrier, hence the latter Organization must be given due notice and afforded an opportunity to be heard, particularly in view of the past history of relationship between the Clerks and Telegraphers concerning the performance of billing by teletype; third, that the 1955 Agreement was not, nor was it intended as, an exclusive allocation of any work; and fourth, that Carrier violated nothing in the Clerks' Agreement when, in order to handle shipment deliveries more expeditiously at destination, it required Telegraphers

“to prepare and transmit waybills by means of teletype machines from the telegraph office at Los Angeles to other telegraph offices at various points on carrier's lines”.

The answer to Carrier's first proposition is that the dispute concerns work done by employees of Carrier and the parties actually agreed upon rules to govern them. The circumstance that the commodities moved by truck is not controlling, since Carrier assumed the responsibility for performance of the LCL billing involved, for its wholly owned subsidiary. Compare Awards 4598 and 7194. The answer to Carrier's second proposition is that this Division notified The Order of Railroad Telegraphers of the pendency of this dispute and the latter responded that it was not involved.

As to Carrier's third proposition— and Employees' version of the effect of the 1955 Agreement — Carrier considered the latter as something merely setting certain assignment procedures for the handling of seniority at the 24th Street Sub-Agency, unrelated to the matter in dispute. It argued that the Agreement did not allocate work to Clerks. Employees, on the other hand, maintained that the work subject to this claim first materialized on September 14, 1955 and thereupon employees rated and classified under the Clerks' Agreement were granted the preferential right to perform all of the duties in connection therewith, involving work within the scope of that Agreement, to the exclusion of performance by Telegraphers. By its very nature, Employees argued, the 1955 Agreement without exception reserved to Clerks the work involved by confining seniority at the location among the first employees there, listed by position. Thus, Employees would treat the quantum of work at the 24th Street Sub-Agency as a newly created and fenced-in “island” of Clerks' work, impervious to effectual influence by any past practices which might permit performance in some situations by members of other crafts.

The Board subscribes fully to the position of neither party with respect to the purport of the 1955 Agreement. This document clearly intended, the Board believes, (1) generally to bring within the operation of the Clerks' Agreement the group of new employees, listed by positions, with the work of the positions including that of LCL Billers; and (2) specifically to create for the initial incumbents preferred seniority with respect to new positions and vacancies, and with respect to displacement, at the 24th Street Sub-Agency, instead of some other relative seniority status on Los Angeles Roster No. 3. The intent was greater than that urged by Carrier; and at the same time it was less than that urged by Employees, since the Board feels that the particular mass or volume of work became attached to Clerks' work by accretion and subject to the same scope and concessions.

This leaves for consideration Carrier's fourth proposition and the basic area of dispute — whether Carrier in fact wrongfully transferred to Telegraphers work rightfully belonging to Clerks. The record does not describe precisely the physical and mental effort involved in “making a waybill”, by either LCL Billers at the 24th Street Sub-Agency initially or Telegraphers at the Spring Street Freight Station subsequently. However, it is apparent that the parties understood that the dispute concerned one or the other of the processes of (1) setting down the first impression of date taken from shipping orders or bills of lading furnished by the shippers (whether by hand or typewriter or teletype machine) and (2) initiating transmission thereof to the destination.

Carrier addressed itself to the latter process, arguing that the dispute did not involve utilization of telegraphers on clerical work to fill out their shifts but their utilization for teletyping. It regarded the dispute as an effort by Clerks to invade the teletype area which, Carrier maintained, belonged to Telegraphers in the absence of agreement between the two Organizations. Carrier relied upon Award 616 of this Board. In that Award, issued in 1938, the Board held that neither the Telegraphers' nor the Clerks' Agreement contemplated exclusive use of teletype machines; that a jurisdictional dispute existed, as to which the Board had no jurisdiction; and that the dispute should be remanded. It should be noted that the claim treated in Award 616 was that a position of teletype operator at two locations, who would now teletype waybills formerly typed by Waybill Clerks and forwarded on trains carrying the shipments, or mailed on later passenger trains, should be bulletined and assigned in conformity with Rule 33 of the Clerks' Agreement, in its then form, rather than filled by employees covered by the Telegraphers' Agreement.

Employees addressed themselves to the former process and regarded the instant claim as an effort to preserve for their members work belonging to them, regardless of the ultimate vehicle of transmission; in other words, it did not involve the question, as such, of who should operate a teletype machine.

Considering the nature of the dispute as that urged by Employees, within its original Statement of Claim, the Board has determined that Carrier improperly transferred work clearly regarded initially as Clerks' work upon the execution of the 1955 Agreement. Certainly, "LCL Billers", listed with that Agreement, constituted a position within Scope Rule 1 of the Clerks' Agreement. The parties clearly understood so in 1955, for the Agreement then entered into waived seniority rules of the Clerks' Agreement to a certain indicated extent only and added a position of Chief Clerk to Addendum No. 1 to the latter Agreement. Furthermore, the making of waybills was an LCL billing function performed for a while at the 24th Street Sub-Agency; and the discontinuance of performance by LCL Billers of the function of setting down the first impression of data taken from shipping orders or bills of lading furnished by shippers, and placing of this performance in the hands of Telegraphers, was a transfer of the function to another craft.

The figures on variations in the size of the personnel complement at each of the two stations are inconclusive, for according to Carrier's response to Employees' assertion of decrease on the one hand and increase on the other, the LCL Billers increased in number to 20 in January 1956 and subsequently decreased to 9 in July 1957, while the teletype operators increased in number to 11 in December 1956 and subsequently decreased to 2 in September 1957.

The matter did not involve performance of clerical work by Telegraphers to fill out their shifts — Carrier so stated. Carrier's original position on the property was that the gist of the dispute was "performance of duties involved by employees of another craft in accordance with long standing practice". Thus, according to Carrier, "said work" — referring to preparation and transmission of waybills by teletype machine — had been performed for many years by Telegraphers on its property, and, by hypothesis, at least "preparation" referred to work of a craft other than Telegraphers. However, there was no assertion nor showing that any such past practice encompassed the removal from Clerks of a sub-

stantial amount of preparing waybills and the bringing thereof to a different location situated a substantial distance away, here three miles. See Awards 4288 and 5110.

The Board therefore concludes that the claim should be sustained, with respect to waybills for straight shipments. The Statement of Claim and Employees' Ex Parte Submission proceeded on the basis of the then prevailing piece work rates at the Spring Street Freight Station, but the only wage rate applicable at the 24th Street Sub-Agency revealed by the record was \$14.74, presumably the initial daily rate. In order to provide to Clerks compensation for what they would have received, the parties are instructed to determine the total amount thereof by joint check, on the basis of (1) the number of such manifold type waybills prepared and transmitted by Teletype Operators at the Spring Street Freight Station from data on shipping orders and/or bills of lading brought from the 24th Street Sub-Agency subsequent to March 1, 1956 and (2) the number of hours LCL Billers at the latter location would have consumed in preparing the same, during the period of each prevailing wage rate there for LCL Billers commencing with \$14.74 per day. Carrier shall compensate the employes listed in the Statement of Claim, namely, Charlotte Trower, Mary F. Butler, Jewel Mowrey, Anne Sesto, Frank Hodson, Jean Peterson, Marilyn Messenger, Elsie Ingersoll and Bessie Cuthbert (occupants, on date of claim, of positions of LCL Billers at the 24th Street Sub-Agency, assigned to perform the duties of LCL Billing), and/or their successor or successors, if any, LCL Billers, by paying to each a share in the total amount of compensation in proportion to his or her respective length of service with Carrier since March 1, 1956.

**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 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 Claim is sustained and to be disposed of according to Opinion.

#### AWARD

Claim sustained and to be disposed of according to Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.