

Award No. 12981
Docket No. CL-12689

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 (GL-4930) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it removed the physical handling of Bona Candy Company rail-billed freight from the scope and operation thereof at Los Angeles Freight Station and assigned it to employees of the Pacific Motor Trucking Company, which employees have no seniority rights thereunder; and

(b) Carrier shall be required to restore said work to the scope and operation of the Agreement and compensate employee Robert E. Svoboda, James M. Brunsman, Sixto B. Arroyo, and Robert Grier, eight (8) hours' compensation each at pro rata rate of stevedore March 7, 10, 11, 12 and 13, 1958, on which dates the violations took place.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) 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 (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. Every year, during the month of March, the Bona Candy Company of San Jose, California, ships approximately 250,000 pounds of candy for Camp Fire Girls, Los Angeles Area Council, to Los Angeles. Prior to 1953 the candy was loaded into box cars and shipped from San Francisco, California, to Los Angeles via Carrier's "overnights", fast merchandise trains that operate on passenger train schedules. Upon reaching Los Angeles the box cars were spotted at Carrier's Los Angeles Freight Station where employees covered by the Agreement unloaded the candy, checked it, and subsequently trucked it through the freight shed and into Pacific Motor Trucking Company vans spotted on the opposite side, for delivery in the Los Angeles area.

(Exhibits not reproduced.)

OPINION OF BOARD: The following material and relevant facts are not in dispute:

Prior to 1953 freight shipments of the kind here involved were made by box car via fast merchandise trains that operated on passenger train schedules. Upon arrival at Los Angeles the box cars were spotted at the freight station where employes covered by the Clerks' Agreement performed the work of unloading, checking, sorting and delivering the company freight to Pacific Motor Trucking Company vans for delivery to consignees in the area.

The Pacific Motor Trucking Company (herein called "PMT"), a wholly-owned subsidiary of this Carrier, is engaged in the business of the common carriage of freight by highway motor truck, and, insofar as pertinent here, handles a substantial volume of inter-city rail-billed freight shipments under contracts with the Carrier.

In 1953, Trailer-Flat Car Service (the so-called "piggy-back" service) was inaugurated on this property. It consists of hauling over-the-road trailers, or vans, on specially built railroad flat cars. PMT's participation in this service, including the movement of LCL freight between San Francisco and Los Angeles, was to place vans at shippers' door, pick them up after they were loaded, and place them on Carrier's rail flat cars at ramps provided for that purpose. Vans were then moved "piggy-back" via Carrier's rails to destination where they were unloaded and delivered to consignees by PMT equipment.

In the case before the Board, the vans loaded with Girl Scout Candy were picked up by PMT trucks and placed on Carrier's flat cars by PMT employes at San Jose, California, for delivery to consignees in the Los Angeles area the following morning. Upon arrival at Los Angeles they were removed from flat cars by PMT employes and hauled to an area adjacent to the Freight Station. At that point, the work of transferring the candy into PMT trucks for delivery to the consignees was performed by PMT employes. This is the work which the Employees allege is reserved to them under the Clerks' Agreement and which, therefore, may not properly be performed by others.

The Scope Rule of the Clerks' Agreement lists positions covered thereby but does not describe the work to be performed. Therefore, when asserting an exclusive right to perform a particular kind of work, the Employees must show by competent evidence that that work has been assigned to and performed by covered employes consistently over so long a period of time as to establish their right to continue to perform it to the exclusion of all others. (See Award 2701). And it is too well established to require citation of authority that if such showing is made then the Carrier's unilateral removal of that work from Agreement coverage and its assignment to others not so covered constitutes a violation of the Clerks' Agreement.

It is not denied that for many years prior to the inauguration of piggy-back service on this property, the work of handling LCL freight at Los Angeles was assigned to and performed by covered freight station employes there. It is also clear that during this period shipments of the kind here involved were received, checked, sorted and delivered by such employes to PMT trucks for ultimate delivery to consignees in the Los Angeles area. What is sharply disputed by the parties is whether the practice was continued after the "piggy-back" operation became the established method of

transporting such shipments—the Employees argue that it was; the Carrier contends that PMT employes, rather than Clerks, handled such split delivery shipments at Los Angeles “in precisely the same manner” as was done in the instant case.

The Board finds the preponderance of the evidence of record supports the position taken by the Employees in this case. That evidence establishes the exclusive contractual right of covered employes to handle LCL freight shipments at Los Angeles on the basis of a consistent practice of long duration. That right may not properly be abrogated by a mere change in the method of transporting such shipments, (and that is all that was done here) or for reasons of operational efficiency (See Award 8751). This is not to say that PMT equipment and employes may not properly be used to load and unload PMT vans on and off Carrier's flat cars as a part of the piggy-back service at Los Angeles. What we do hold is that the handling of LCL freight or split delivery shipments there is a protected right of employes covered by the Clerks' Agreement.

Award No. 17 of S.B.A. No. 194 (St. Louis-San Francisco Railway Co. & Clerks), cited and relied on by Carrier is clearly not in point. There the pertinent finding upon which the denial issued was that because the LCL shipments were moved by motor truck and not by rail (although rail-billed they were in the uninterrupted custody of the trucking company from the point of receipt to the point of delivery to the consignee; that, therefore, there was no “farming out” of the intermediate handling and checking. Rather than being persuasive here, a fair reading of Award No. 17 leaves the clear impression that had the motor trucking company's custody been interrupted through shipment by rail (as was the case here) the Board there would have found a violation.

In the light of the foregoing the claim will be sustained.

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;

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.

DISSENT TO AWARD 12981. DOCKET CL-12689

Award 12981 commits error of so basic and far reaching effect as to require emphatic dissent. The work claimed is tailgate to tailgate transfer of merchandise by trucking company employes after the vans are removed by truckers from flat cars at the destination of a piggy-back shipment. This is work that the railroad clerical employes have never done before, exclusively or otherwise. The handling of the shipment while in the custody of the trucking company was incidental to truck carriage by PMT and was not covered by the Clerks' Agreement with the railroad. The railroad involvement consisted of hauling the loaded vans on flat cars from San Jose to Los Angeles.

The Referee says: "the preponderance of the evidence of record supports the position taken by the employes in this case," after saying in the paragraph immediately above it that the employes "argue" that since the introduction of piggy-back on this railroad, the freight house employes continued to handle freight through the freight house and into PMT local delivery trucks in the same manner as when box cars were used and were spotted at the freight house platform. Not only do the employes present no evidence preponderant or otherwise on this, their argument to such effect begs reason and common sense.

This Award also is directly contrary to the findings of **Special Board of Adjustment 194**. Award 17, which was cited to the Referee which he says is not in point, though it was there properly held that: "the handling and checking of LCL merchandise while it was in the uninterrupted custody of FTC (Frisco Transportation Company) during the course of shipment was incidental to the truck carriage by FTC and was not covered by the scope rule of the Clerks' Agreement." (Interpolation ours.)

Award 12981 is patent error, and we therefore dissent.

D. S. Dugan
R. E. Black
P. C. Carter
T. F. Strunck
G. C. White