

Award No. 13024
Docket No. CL-12725

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-4935) that:

(a) Carrier violated and continues to violate the Agreement between the parties effective October 1, 1940, as amended, when on March 14, 1959, and subsequent dates it required and/or permitted persons not covered by the Clerks' Agreement to load United States Mail on its mail trucks and to take such loaded mail trucks into its baggage room at Turlock, California, and;

(b) Carrier shall now be required to compensate Mr. F. P. Chisum, Turlock, his substitutes and/or successors, if any, for eight hours' additional compensation at time and one-half rate March 14, 15, 21, 22, 28, 29; April 4, 5, 11, 12, 18, 19, 25, 26, 1959, and each Saturday, Sunday or holiday thereafter that the violation recurs.

EMPLOYEES' 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. Turlock, the station here involved, is on Carrier's Merced Subdivision, 126.2 rail miles from San Francisco, California. At the time of this dispute the following positions were in existence at Turlock:

Position and No.	Assigned Hours	Rest Days
Agent-Telegrapher No. 45	9:00 A. M. to 5:00 P. M.	Sat. and Sun.
Telegrapher-Clerk No. 25	9:45 P. M. to 5:45 A. M.	Tues. and Wed.
Relief Telegrapher-Clerk	*See below	Thurs. and Fri.
Cashier No. 007	8:00 A. M. to 5:00 P. M.	Sat. and Sun.

*Relieves Position No. 45 on Saturday and Sunday, Position No. 25 on Tuesday and Wednesday.

ties not a part of the regular freight station forces; or to individuals where amounts of less than thirty dollars (\$30.00) per month are paid for special services which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duty of the carrier."

"OVERTIME AND CALLS. OVERTIME

Rule 20.

(3) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee. (Effective September 1, 1949.)"

With regard to Rule 1, as clearly stated in Section (a) thereof, "These rules shall govern the hours of service and working conditions" of positions and class of positions there identified. It does not describe the work embraced by the agreement. Further, neither that rule nor any other rule of the current agreement relates to or even by inference reserves to listed positions the work forming basis of this claim.

With regard to Rule 20(e), the word "work" as pertaining to "the regular employee" is termed by the Carrier as work not part of any assignment latched exclusively to employees covered by the current agreement which in the instant case it is not, and based on longstanding practice of handling U.S. Mails on the property over which handling the Post Office Department retains control as referred to in Rules 19, 20 and 23 of the Mail Book, and in the above quotation of this Board's Award 5877, and in no way reserves the work to the Cashier (Claimant's position).

As pointed out by the Carrier, the claim is completely lacking in merit because of the total lack of an agreement provision supporting the claim, and the longstanding practice on the property of handling U.S. Mails over which the Post Office Department of the U.S. Government retains control.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and asks that if not dismissed, it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The following are deemed to be the relevant and material facts in this case:

In January of 1955, U.S. Mail was delivered to Turlock, California, by truck following discontinuance of train service at that location. Two deliveries were made each day, including Saturdays, Sundays and holidays. Upon arrival of the mail at Turlock during the work week employees covered by the Clerks' Agreement delivered the mail received from the tail gate of the trucks, or accepted mail to be delivered to the trucks, to or from a mail contractor hauling it between the freight station and the local post office. This work was performed by covered employees daily except on Saturdays, Sundays and holidays, at which time the mail received by truck was either locked up in the station baggage room by the driver or delivered by him

directly to the contract mail hauler when the latter was available. Similarly, outbound mail was delivered by the mail contractor either directly to the truck or locked up in the baggage room for subsequent pick-up by the truck driver.

There is in evidence a certain letter of instruction issued by the Carrier on February 5, 1958, addressed to the occupant of the R & B Clerk's position at Turlock Station, the duties of which were later assigned to and performed by the Claimant. Among other things, it contains the following language deemed pertinent here:

"Assist in handling mail and baggage Train 51 and 52 also trucks handling mail, if freight clerk not on duty or busy elsewhere, making sure that all U.S. mail brought to depot by mail handler from Post Office, and mail unloaded off trains or trucks that cannot be turned over to contract mail handled between depot and U.S. Post Office is securely in baggage room under lock at all times when there is no one to guard same."

"Check office doors, windows and baggage room doors and see that they are securely locked, making sure there is no U.S. mail or baggage on trucks that is not put into baggage room."
(Emphasis ours.)

The claim is based on the premise that under the letter of instructions (supra) Claimant having been assigned to and having performed the work of handling U.S. mail at Turlock during his work week, it became a regular part of his every-day duties and could not, therefore, properly be assigned to others on his rest days.

The Board cannot agree with the contention of the Employees that the instructions, referred to above, conferred the exclusive right to handle U.S. mail at Turlock on Claimant or any other covered employee. The pertinent language, read literally, requires the addressee to assist in the mail handling and to make sure that the mail was safe and secure. There is no express directive or instruction that he alone would be responsible for the actual handling—his job was to assist both the Mail Messenger and the truck driver and, in their absence, to inspect and check the facilities provided for the safe-keeping of the mail.

Nor does the past practice of mail handling at this location support Employees' position. Thus the facts show that since January 9, 1955, no covered employee was used to handle the mail at Turlock on Saturdays, Sundays and holidays. Nor were any claims made for such work by the Employees until some four years later when the instant claim was filed following abolishment of the position of Freight Clerk on March 9, 1959, and the assignment of the duties of that position, including the handling of U.S. mail to the Cashier (Claimant).

The Board has also noted that following the issuance of the letter of instructions of February 5, 1958, upon which the Employees' case rests, the handling of the mail on the R & B Clerk's rest days was performed by the truck driver and/or the Mail Messenger. This practice continued for a little more than a year without protest; i.e., until March 14, 1959, when this claim was made.

While it is true, as the Employees assert, that established past practice does not bar the presentation of a claim based upon an alleged rule violation,

nevertheless it is persuasive evidence that the parties have mutually acquiesced in a course of conduct to such an extent that an agreement may reasonably be inferred. The evidence of record firmly establishes that the practice of handling mail at Turlock on rest days and holidays by other than covered employees was acquiesced in by these parties for many years, including the period immediately following the issuance of the letter of instructions. By so doing, the parties have revealed their own interpretation of the meaning of those instructions and, accordingly, are bound thereby.

Therefore, the Board concludes the Employees have not demonstrated an exclusive right to the work here involved. In view of their failure to do so, we cannot find a violation of the Scope Rule of the Agreement.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.