

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, 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 (GL-4946) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it established a position of Steno-Clerk to Division Construction Engineer, Salt Lake Division, and failed and refused to bulletin it for seniority choice of employees covered by the Agreement but, instead, awarded it to an individual without seniority rights thereunder; and,

(b) Carrier shall now be required to compensate Mr. C. B. Stanger, Assistant Head Clerk, Maintenance of Way Department, Ogden, Utah, additional compensation at the rate of \$400.00 per month beginning April 4, 1956, and continuing until he is placed on the position of Steno-Clerk to Division Construction Engineer, Salt Lake Division.

**EMPLOYES' STATEMENT OF FACTS:** 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 (hereinafter referred to as the 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.

1. Carrier's Salt Lake Division extends from Sparks, Nevada, to Ogden, Utah. Spanning the Great Salt Lake between Tresend and Bridge, a distance of thirteen miles, Carrier had (at the time of this dispute) the longest railroad trestle in the world. Sometime prior to April 4, 1956, Carrier began preparing for the task of filling the lake bottom with rock and gravel from Saline, Utah to Lakeside, Utah, in order to form a road-bed to replace the trestle. This was known as the Lucin Cut-off Fill Project, and covered by Carrier's GMO-66009. To carry the rock and gravel, barges capable of hauling

With regard to Rules 27, 28 and 33, these rules certainly are not applicable since Rules 1 and 26 are not involved.

As pointed out by the Carrier, the claim is completely lacking in merit by reason of the fact no provision of the current agreement supports the claim, and the long-standing practice on this property must control.

Even if the claim had merit, which Carrier denies, there would be no proper basis for paying the Claimant more than the difference in earnings between position No. 225 and position to which he was assigned. In this connection, attention is called to claim in Award 6209 on this property, which was presented to this Board on the basis of difference in earnings, and paid for the period determined by this Board on the basis of difference in earnings.

### CONCLUSION

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

**OPINION OF BOARD:** In 1956 this Carrier entered into a contract with the Morrison-Knudsen Company under which the latter was to construct an earth fill bottomed on rock and gravel across the Great Salt Lake in Utah. The fill when completed was to form the road bed for a second and superior main line to the then existing main line on the Great Salt Lake Trestle.

On April 4, 1956, the Carrier established a position of Steno-Clerk to the Construction Division Engineer who had been assigned to the fill project in a supervisory capacity. Despite the Organization's contention that the Steno-Clerk position and the work thereof was within Agreement coverage and should have been bulletined to covered employees, the Carrier awarded it to an applicant holding no seniority rights under the Clerks' Agreement. Claimant was the senior bidder for the job among those employees listed on Roster 1 of the Carrier's Salt Lake Division. His bid was declined and an applicant holding no seniority rights on the Division was appointed.

While the record is not clear as to the precise supervisory duties performed by the Division Construction Engineer in connection with the fill project, it does establish that his work was for the sole benefit of the Carrier. It also shows that the work performed by the occupant of the Steno-Clerk position was for Carrier's sole benefit. He was a bona fide employe of the Carrier at all times and performed no work for the account of the contractor.

The Board finds from a preponderance of the evidence of record that work of the kind here involved is covered by the Scope Rule of the Agreement and that it may not properly be removed therefrom by the Carrier under the factual circumstances of this particular case. The Carrier's defense of past practice based upon two isolated instances, standing alone, cannot prevail. We have consistently held that past practice to be controlling must be shown to have been of sufficient consistency and duration to establish acquiescence resulting in agreement (Awards 4428 and 5877). That showing was not made here.

Accordingly, the Board finds the Agreement was violated when Carrier failed to bulletin and award the Steno-Clerk position in accordance with applicable schedule rules. The claim, therefore, will be sustained but payment of compensation to Claimant will be limited to the difference in earnings

between the position sought and the position or positions held by him during the period set out in the Statement of Claim, on the basis of the Board's finding in Award 6209 involving these same parties.

**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 to extent indicated in Opinion.

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.