

Award No. 14251
Docket No. CL-15033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**LOS ANGELES UNION PASSENGER TERMINAL
(Southern Pacific Company, Pacific Lines)
(The Atchison, Topeka and Santa Fe Railway Company)
(The Union Pacific Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5563) that:

(a) The Los Angeles Union Passenger Terminal violated the Clerks' Agreement on August 27, 1961 when it required Mr. James V. Ward, Relief Foreman, to abandon his position to perform work as Truck Driver instead of calling and using regular assigned Truck Driver Mr. Henry F. Knostman; and,

(b) The Los Angeles Union Passenger Terminal shall now be required to allow Mr. James V. Ward two (2) hours' additional compensation at the time and one-half rate of Truck Driver; and,

(c) The Los Angeles Union Passenger Terminal shall now be required to allow Mr. Henry F. Knostman, Truck Driver, eight (8) hours' additional compensation at the time and one-half rate of his position.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date January 1, 1959 (hereinafter referred to as the Agreement) between the Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) 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. The Los Angeles Union Passenger Terminal is located in the city of Los Angeles, California. Its operation consists of handling passenger trains

(one of his assigned rest days), to perform the work described in paragraph 5 above that date. By letter dated September 21, 1961 (Terminal's Exhibit B), the Terminal's Superintendent denied the claim on the basis that the work in dispute was part of Claimant Ward's Sunday assignment.

By letter dated November 17, 1961 (Terminal's Exhibit C), Petitioner's General Chairman appealed the claim to the highest officer designated to handle such disputes and by letter dated June 4, 1963 (Terminal's Exhibit D), the latter denied the claim, advising the work in dispute was properly part of the assignment of foreman, that there is no rule of the current agreement which restricts employees classified as truck drivers from performing that work, and the claim was not supported by Rule 19(e), 21, nor any other provision of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization filed these claims on behalf of the two individuals involved herein, predicated upon the following facts. Claimant No. 1, James Ward, worked his regular relief position of Foreman, Mail and Baggage Department, hours 7:00 A. M. to 3:30 P. M., on Sunday, August 27, 1961. At approximately 1:00 P. M. on that day, he was instructed to recover some mail pouches which were found in a car delivered from the Terminal to the Santa Fe Coach Yard.

Occasionally, mail pouches or pieces of baggage are inadvertently overlooked while being unloaded in the Terminal. Subsequently, these articles are discovered after the cars have been switched to the parent yard. On those infrequent occasions, when these lost articles are too heavy or bulky to remove by the finder, the appropriate office at the Terminal is notified so that they can be brought back to the Terminal.

Claimant Ward followed instructions by proceeding to the Stores Department to obtain the Terminal's pick-up truck, drove it over city streets to the Santa Fe Coach Yard, unloaded the mail pouches from the rail car, loaded them on the truck and returned them to the Terminal's Baggage and Mail Department for further handling.

A claim was thereafter filed on behalf of Claimant Ward for two hours' compensation at the time and one-half rate of Truck Driver, account required to suspend work as Relief Foreman. In addition, a claim was filed on behalf of Henry F. Knostman, Claimant No. 2 herein, the regular incumbent of the Truck Driver Position, hours 6:30 A. M. to 3:00 P. M., rest days Saturday and Sunday. The basis for the latter claim was predicated upon the alleged failure of the Carrier to call Claimant Knostman to perform the said work on his rest day.

In support of its position, the Organization cited the following rules:

"RULE 19.

(e) Where work is required by the Terminal 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."

"RULE 20.

(d) Except as otherwise provided in Rule 24, employees notified or called to perform work on Sundays, week day off days, or holidays, shall be paid a minimum of eight (8) hours at time and one-half."

"RULE 21.

Employees shall not be required to suspend work during regular hours to absorb overtime."

In denying both claims, the Carrier defended its position by alleging the following:

"While the duties here in dispute may be required only infrequently of a Foreman, Head Tractor Driver or the Store Department Truck Driver, nevertheless, they have been indiscriminately assigned to these positions by the Terminal's Supervisors throughout the years and have been included in the duties of those positions since the early days of the Terminal operation in 1939."

and also that:

"Rule 19(e) does not require the Carrier to call in an employee on his rest day to perform work that may properly be performed by incumbents of other positions on duty at the time, and such handling in getting its work performed has been a practice of long standing at the Terminal throughout the life of the current agreement and for many years prior thereto."

It is noteworthy, that in its rebuttal statement the Carrier further alleged the following:

"We are here dealing with an incidental duty that has for years been performed at the Terminal in a number of ways, as stated in Item 4 of Terminal's Statement of Facts, throughout the years that the Terminal has been in operation. A duty of that nature does not, of itself, occur with sufficient frequency to warrant its assignment exclusively to any particular position and has always been performed in the most expeditious manner available at the moment."

Thus, the issue raised by the Carrier before this Board is whether such duties are incidental and were performed by Foremen for many years. We have carefully reviewed the Record for supporting data to substantiate the Carrier's allegations, but have searched in vain. On the contrary, the Organization has included a number of statements from Assistant Foremen and Foreman — employees of many years' seniority in these positions — who vigorously controvert the Carrier's assertions. In substance, these individuals deny that they were ever instructed to use anyone other than the assigned Truck Driver, nor were they ever instructed to use the pick-up truck for the purpose in issue herein.

This Board is cognizant of the inherent right of Management to operate its business efficiently for the best interest of its stockholders, the public and its employees. In seeking to accomplish these objectives, incidental duties of a

de minimus nature are, at times, necessarily performed by others. However, the duties involved herein, are not deemed to be minuscule. Furthermore, a bare statement that such duties have previously been performed by Foreman, standing alone, cannot substitute for proof. The record does not contain an iota of proof to substantiate the Carrier's allegations.

It is our conclusion that the Organization's claim on behalf of Henry Knostman, Truck Driver, is meritorious. However, we find no basis to support the claim on behalf of James Ward.

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 Employee involved in this dispute are respectively Carrier and Employee 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 (a) disposed of in accordance with the Opinion and Findings.

Claim (b) denied.

Claim (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1966.