

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Wesley Miller, 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-5881) that:

(a) The Southern Pacific Company violated terms of the Clerks' Agreement at Sacramento, California, when on July 20, 1961, it failed to call and use an available unassigned employee to perform service on a Crane Helper position vacancy and, instead, removed a Lift Truck Operator from his regular assignment and required him to fill said vacancy.

(b) The Southern Pacific Company shall now be required to compensate unassigned employee Gabriel Avila for eight (8) hours' compensation at Crane Helper's rate for July 20, 1961.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent 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.

At the time Gabriel Avila (hereinafter referred to as the Claimant) learned that a regular employee had been required to vacate his regular assignment of Lift Truck Operator on July 20, 1961, to perform service on vacancy of Crane Helper existing that date, he submitted time card claim for having been deprived of eight hours' compensation which would otherwise have accrued to him as an available, qualified unassigned employee.

By letter of August 30, 1961, addressed to Mr. Avila, General Storekeeper D. A. Mount denied the claim by stating:

"On the date in question, Lift Truck Operator Carmen Gonzalez was used at Store 3 to assist in unloading materials. This was brought about due to no work assignment for the type of lift truck that Gonzalez was operating. This is a stand-up lift truck which must be used with a specific type of pallet. These pallets were on order but

'Truck Operator' used [as] a Crane Helper unloading carload of Signal Material at 'Old Store No. 3.'"

By letter dated August 30, 1961 (Carrier's Exhibit A), Carrier's General Storekeeper at Sacramento denied the claim.

By letter dated October 27, 1961 (Carrier's Exhibit B), Petitioner's Division Chairman submitted the claim on behalf of Claimant to Carrier's General Storekeeper and by letter dated December 5, 1961 (Carrier's Exhibit C), Carrier's General Storekeeper denied the claim.

By letter dated January 8, 1961 (actually meant 1962) (Carrier's Exhibit D), the Division Chairman advised Carrier's General Storekeeper that the claim would be appealed.

By letter dated January 25, 1962 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Manager of Stores, and by letter dated March 20, 1962 (Carrier's Exhibit F), the latter denied the claim.

By letter dated May 17, 1962 (Carrier's Exhibit G), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated November 11, 1963 (Carrier's Exhibit H), the latter denied the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Awards 14118, 14772, 14081, 13741, 13982, 13707, 13283, 13207, and 12352 are applicable to this Claim. We believe these Awards are correct, and, consequently, dismissal action is necessitated.

**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

In failing to particularize the Rule or Rules allegedly violated by the Carrier in the handling of this dispute on the property, Petitioner failed to perfect its Claim and we are not empowered to adjudicate its merits.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1967.

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