

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6043) that:

(a) The Southern Pacific Company violated terms of the current Clerks' Agreement at Portland, Oregon, on August 21, 1961, and continuing thereafter, when it permitted employees of the Pacific Motor Trucking Company to perform damage inspections and file reports in connection therewith; and

(b) The Southern Pacific shall return such work of making damage inspections to employees covered by the Clerks' Agreement who by custom and practice have in the past performed the service; and,

(c) The Southern Pacific Company shall now be required to allow Mr. R. E. Berry, Jr., and/or his successor or successors in interest, namely, any other employee or employees who may stand in the same status as claimant and who may be adversely affected, eight (8) hours additional compensation at pro rata rate of Receiving and Delivery Clerk, Portland Freight Station, for August 21, 1961, and each subsequent date thereafter until violations cease.

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.

CAR SHIPPER NO. 100012

"Top scratched on right side about 2 inches long light. No salvage. Stan PMT 8-21-61."

CAR SHIPPER NO. 100111

"Small scratch on right door. Bad paint on left rear fender and rear of car (factory) no parts for salvage. PMT. 8-21-61.

/s/ Ellis Standly"

5. Clerk R. E. Berry, Jr. (hereinafter referred to as the claimant) was assigned to Position No. 14, Teller, at the Portland Freight station, assigned hours 7:30 A.M. to 4:00 P.M., rest days Saturday and Sunday. On Monday, August 21, 1961, claimant performed service on his assignment and was allowed the applicable rate of pay therefor on that date.

6. By letter dated September 27, 1961 (Carrier's Exhibit B), Petitioner's Division Chairman presented to Carrier's Division Superintendent claim in behalf of claimant and successors for one day's pay at rate of Receiving and Delivery Clerk, August 21, 1961, and subsequent unspecified dates, contending that the current agreement was violated when employees of PMT made inspection and report of damage to carloads of automobiles which they unloaded and delivered at Portland.

By letter dated November 22, 1961 (Carrier's Exhibit C), Carrier's Division Superintendent denied the claim on the basis that such inspection of shipments handled by PMT was proper function of PMT, to which, by letter dated December 2, 1961 (Carrier's Exhibit D), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated January 16, 1962 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated August 6, 1963 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to 1960 R&D Clerks from Carrier's former Park Street Freight Station in Portland inspected carloads of automobiles for damage and made out necessary reports. During 1960 Carrier discontinued the practice of having R&D clerks perform the claims inspection work which was thereafter done by employees of the Pacific Motor Trucking Co., giving rise to the instant grievance on August 21, 1961.

Organization contends that this inspection and claim reporting work has always been reserved to covered employees; that Carrier acted improperly in permitting outsiders to do the inspection work, while still receiving and relying upon presented reports in processing claims; and that Carrier has acted inconsistently by still using covered employees in connection with lading other than automobiles and inspecting in instances where there has been extensive damage. Accordingly, Organization concludes, Carrier should assign all inspections, when required, to clerks, and reimburse employees for earnings lost.

Carrier asserts that Rule 1, Scope does not define or describe work as reserved to clerks; and that exclusive right to work has to be proven on a

system wide basis to the exclusion of all others. Absent a showing of exclusivity, as in this case, claim must be denied.

This Board has repeatedly held that Petitioner has the burden of proving by a preponderance of evidence, that work in dispute belongs exclusively to claiming employes by virtue of custom, practice and tradition on a system wide basis. (14050, 14751.) Organization relies on Award 8831 (Daugherty) which stated in part that the evidence of past practice and custom

"... should be related not merely to the property as a whole but rather to the particular location or subdivision thereof where the dispute has arisen."

It is clear from that award that although particular attention must be paid to practice and custom in the location involved, it also assumes that the practice and custom be related to practice and custom on the property as a whole. We find that no proof of exclusivity has been made in this case; in fact it is acknowledged that at some locations "Carrier may indeed find it necessary to require others to inspect and report damaged or missing freight as a duty incidental to their primary function."

In view of the foregoing we are compelled to deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1968.

LABOR MEMBER'S DISSENT TO AWARD 16371, DOCKET CL-16556

Labor Member's dissent to Award 16356, Docket CL-16743 is adopted as the dissent to this Award 16371, Docket CL-16556.

D. E. Watkins
Labor Member
6-26-68

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.