



Award No. 17140

Docket No. CL-17311

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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-6327) that:

- (a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when on March 16, 1965, at Colton, California, it failed to call and use employee W. R. Johnson to transport crews but, instead, got the work done by an on-duty employee who was required to suspend work of his own assignment; and,
- (b) The Southern Pacific Company shall now be required to allow Mr. W. R. Johnson two (2) hours' compensation at the time and one-half rate of Assistant Crew Dispatcher Position No. 33 on March 16, 1965.

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.

On the day that this dispute arose Mr. W. R. Johnson, hereinafter referred to as the Claimant, was assigned to a relief position with the following schedule:

Sunday—Crew Disp. No. 27, 3P.M. to 11P.M.
Monday—Crew Disp. No. 27, 3P.M. to 11P.M.
Tuesday—Asst. Crew Disp. No. 33, 3P.M. to 11P.M.
Wednesday—Crew Disp. No. 28, 11P.M. to 7A.M.
Thursday—Crew Disp. No. 28, 11P.M. to 7A.M.
Friday—Rest Day
Saturday—Rest Day

and Mr. B. U. Doty was the incumbent of warehouse Foreman Position No. 9, 7 A.M. to 3:30 P.M., rest days Saturday and Sunday.

In addition to crew dispatching duties claimant was regularly assigned to and transported crews every day of his work week.

automobile for transporting train and engine crews was assigned to Positions Nos. 47 and 33, Assistant Crew Dispatchers, during their respective assigned hours, when those positions were not calling crews or assisting with other duties in the office. During the third shift (11:00 P.M. to 7:00 A.M.) Position No. 28, Crew Dispatcher, performed service alone; and since it was necessary for that position to remain available at all times at the office during the assigned hours, any train and engine crew transporting that was required during that time was assigned to available clerical employees either at the Colton Yard office or, if convenient and available, to the Car Clerks on duty at **Kaiser Siding**.

The claim here involved arose when, at 9:00 A.M. on Tuesday, March 16, 1965, it was necessary to transport a train and engine crew from Colton to Kaiser Siding. The clerical employee assigned to Position No. 47, Assistant Crew Dispatcher, on duty at that time, had not yet returned to Colton from an earlier assignment of transporting train and engine crews. In the absence of available transportation, Chief Crew Dispatcher Swartz called Agent R. S. McKinney at the Colton Freight Station, who advised Swartz that the Carrier-owned automobile utilized by the freight office was available for transporting crews; and owing to the circumstances, Agent McKinney instructed Clerk B. U. Doty, assigned to Position No. 9, Warehouse Foreman, working at the freight station, to drive the train and engine crew to Kaiser Siding.

4. Clerk W. R. Johnson (hereinafter referred to as the Claimant), assigned to Position No. 7, Relief Crew Dispatcher, rest days Friday and Saturday, was scheduled to perform rest day relief service on Position No. 33, Assistant Crew Dispatcher, hours 3:00 P.M. to 11:00 P.M., on Tuesday, March 16, 1965. Claimant performed service on that assignment and was allowed the applicable rate of pay therefor on that date.

5. By letter dated March 29, 1965 (Carrier's Exhibit "A"), Petitioner's Division Chairman submitted a claim to Carrier's Division Superintendent in behalf of Claimant for a two-hour call at the applicable overtime rate of pay of Position No. 33, Assistant Crew Dispatcher, March 16, 1965, based on the premise that Claimant was entitled to be called on duty to transport crews at 9:00 A.M. that date, in lieu of requiring a clerk, already on duty at the Freight Station, to perform that service. By letter dated April 12, 1965 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim. By letter dated April 13, 1965 (Carrier's Exhibit "C"), Petitioner's Division Chairman advised that the claim would be appealed.

By letter dated June 2, 1965 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated November 23, 1966 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits not reproduced)

OPINION OF BOARD: The Claimant herein was assigned to a regular relief position at Colton, California. On the date involved, March 16, 1965, he was assigned to relieve on Position No. 33, Assistant Crew Dispatcher, hours 3:00 P.M. to 11:00 P.M. The claim is that he should have been called out at 9:00 A.M. on the date involved, to transport a train and engine crew from Colton to Kaiser Siding. The crew was actually transported in a company-owned automobile, driven by clerk B. U. Doty, assigned to Position No. 9, Warehouse Foreman, working at the freight station.

The Carrier has maintained throughout the handling of the dispute that the transporting of train and engine crews is not the exclusive work of clerical employees, much less the work of any particular classification, and it cites recent Award 15596 as controlling. In that Award we held in part:

"The Scope Rule of the Agreement between the parties does not purport to describe the work encompassed but merely lists the classifications covered. Under such a general Scope Rule, Petitioner has the burden of establishing through probative evidence that the work of transporting train and engine crews was exclusively reserved to the clerks by reason of tradition, custom and historical practice.

* * * * *

"Examination of the record reveals that the disputed work has been performed by others as well as clerks, and Petitioner's evidence shows only that the work of transporting train and engine crews between Sparks and Fernley, Nevada, has been regularly assigned and performed by Clerks. Therefore, it is apparent that Petitioner has failed to establish the exclusiveness of such assignments, a necessary element without which the Claim cannot be sustained."

The record in our present docket warrants a similar holding and the claim will accordingly be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.