



Award No. 17923

Docket No. CL-18328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6619) that:

1. Carrier violated the rules of the Clerks' Agreement when, beginning May 1, 1967, it did, without conference, negotiation or agreement, arbitrarily and unilaterally remove work from Baytown, Texas Seniority District No. 27 and transfer such work to Settegast Freight Station, Houston, Texas, and have such work performed by employees in Seniority District No. 5.
2. Carrier shall now be required to return such work to employees holding seniority and working positions in Seniority District No. 27.
3. Carrier shall now be required to compensate Clerk E. L. Shepherd for three (3) hours' pay at straight time rate each day Monday through Friday of each work week beginning May 1, 1967 through August 10, 1967.
4. Carrier shall now be required to compensate Clerk Fay Powell for three (3) hours' pay at straight time rate each Tuesday, Wednesday, Thursday and Friday of each work week beginning May 2, 1967 through August 10, 1967.

EMPLOYEES' STATEMENT OF FACTS:

1. The work of rating, revising, billing, cashier and accounting work in connection with outbound LTL freight and outbound LCL freight business for Baytown, Texas, is work which has always been assigned to employees working and holding seniority rights in Seniority District No. 27 at Baytown, Texas.

2. Effective May 1, 1967, all clerical work mentioned in paragraph above was transferred to Carrier's Settegast Freight Station, Houston, Texas, and such work was assigned to positions and employees in Seniority District No. 5.

3. Carrier's Settegast Freight Station, Houston, Texas, is approximately 30 railroad miles west of Baytown, Texas, and is an agency of the Missouri Pacific Railroad Co. The freight station clerical employees at the Houston Agency hold positions and seniority only in Seniority District No. 5.

Pacific Railroad's Seniority District No. 5 whereas those in Baytown were in Missouri Pacific Railroad's Seniority District No. 27.

8. Claim was handled in the usual manner, and in letter of August 6, 1968, Carrier's Exhibit "A," was finally appealed to the Director of Labor Relations, who denied the claim in letter of September 5, 1968, as follows:

"Reference to your letter of August 6, 1968, file G-3221, appealing claims of E. L. Shepherd, for three hours at the straight time rate of pay May 1, 1967, and Fay Powell for three hours at the straight time rate of pay each Tuesday, Wednesday, Thursday, Friday May 2, 1967, with claims on a continuing basis, because the station forces at Houston, Texas perform work of billing and expensing of piggyback volume loads and LCL-LTL shipments originating with Humble Oil at Baytown, Texas.

Effective May 1, 1967, all piggyback volume and LCL-LTL shipments originating with Humble Oil at Baytown was placed in the uninterrupted custody of the Missouri Pacific Truck Lines. Therefore, the Carrier discontinued the work of billing and expensing at Baytown on these shipments.

The freight arrives at Houston as a truck company movement, via MPTL, Inc., and is under their jurisdiction and control. The performance of billing, expensing and accounting work by station forces at Houston for MPTL is not a violation of any Agreement between the Carrier and your Organization. The shipper is not prohibited from routing their freight. The Carrier has not limited or restricted itself under the present Agreement from exploiting new methods and procedures to improve its service to shippers.

In view of the foregoing, claims are without merit or rule support and are respectfully declined."

9. The dispute was considered in conference on September 25, 1968, and confirmed with letter reading in pertinent part:

"During conference you were reminded that the freight consisted of Truck Company freight handled by the Missouri Pacific Truck Lines being under their jurisdiction and control. There is no rule or agreement prohibiting the Truck Company from changing method in which they have their freight shipments handled.

In view of the foregoing, we cannot change the decision given you in our letter dated September 5, 1968 declining the claim."

(Exhibits Not Reproduced)

OPINION OF BOARD: The claim herein arose in connection with the performance by Carrier employes of certain clerical work for the Missouri Pacific Truck Lines, Inc.

The Missouri Pacific Truck Lines is a motor freight Carrier and a separate corporate entity operating under authority of the Interstate Commerce Commission, and various state commissions. There is no collective bargaining agreement between the Missouri Pacific Truck Lines and the petitioning Organization. There is, however, a Memorandum Agreement between the Missouri Pacific Railroad Company, Texas and Pacific Railway Company, Missouri Pacific Truck Lines, Inc., and Texas and Pacific Motor Transport Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which reads:

**"MEMORANDUM AGREEMENT
BETWEEN**

**MISSOURI PACIFIC RAILROAD COMPANY
TEXAS AND PACIFIC RAILWAY COMPANY
(RAIL CARRIERS)**

**MISSOURI PACIFIC TRUCK LINES, INC.
TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY
(MOTOR CARRIERS)**

and

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
(ORGANIZATION)**

"IT IS AGREED:

1. Missouri Pacific Truck Lines, Inc., and/or Texas and Pacific Motor Transport Company clerical work, such as rating, billing, handling of claims and revenue accounting on freight moving on motor transport tariff rates which is not performed by clerks employed by the Rail-Carriers parties to this Agreement will continue to be performed by such rail clerks the same as at present.

2. It is understood and agreed that the clerical employees represented by Organization are employees of Rail Carriers, not of Motor Carriers, and nothing contained herein shall be construed to create any employer-employee relationship between clerical employees and Motor Carriers.

Signed at St. Louis, Missouri, this 1st day of February, 1967.

"FOR THE ORGANIZATION:

/s/ FRANK D. LUPTON

General Chairman—Brotherhood of Railway
and Steamship Clerks, Freight Handlers,
Express and Station Employees
Missouri Pacific Railroad Company

/s/ T. G. BROWN

General Chairman—Brotherhood of Railway
and Steamship Clerks, Freight Handlers,
Express and Station Employees
Missouri Pacific Railroad Company

FOR THE CARRIERS:

/s/ O. B. SAYERS

Director of Labor Relations
Missouri Pacific Railroad
Company
Texas and Pacific Railway
Company

/s/ C. T. GROTON, JR.

President
Missouri Pacific Truck Lines,
Inc.
Texas and Pacific Motor
Transport Company

/s/ T. W. TAGGART, JR.

General Chairman—Brotherhood of Railway
and Steamship Clerks, Freight Handlers,
Express and Station Employees
Texas and Pacific Railway Company

APPROVED: /s/ C. L. DENNIS

Grand President"

File: 205-3729

cc: 205-2093

The claim is that the Carrier (Missouri Pacific Railroad Company) violated its Agreement covering its clerical and station employees when, beginning May 1, 1967, it removed work from Baytown, Texas, Seniority District No. 27, and transferred such work to Settegast Freight Station, Houston, Texas, where the work was performed by clerical employees in Seniority District No. 5.

The record shows that Humble Oil Company maintains a business located three or four miles from the Missouri Pacific Railroad freight office in Baytown, Texas, and ships trailer loads and less than trailer loads of freight via the Missouri Pacific Truck Lines. To handle this business, the Missouri Pacific Truck Lines dispatches a driver from Houston over the highway to Humble Oil Company in Baytown, where he picks up the trailer and returns to Houston via highway. Prior to the dispute involved herein, the Missouri Pacific Truck Lines routed its driver from Humble Oil Company to the railroad freight office in Baytown, where the Missouri Pacific Railroad clerks performed the work of rating, routing and billing the shipment, and then drove to Houston. To expedite the handling, the Missouri Pacific Truck Lines discontinued routing the driver from the Humble Oil Company to the railroad freight office in Baytown, but had the driver go directly to Humble Oil Company, pick up the trailer and return via highway direct to Houston, where Missouri Pacific Railroad clerks performed the work of rating, routing and billing for the Missouri Pacific Truck Lines. The over-the-highway equipment necessary to handle the shipment was within the exclusive control and jurisdiction of the Missouri Pacific Truck Lines from Houston to Baytown and return.

As heretofore indicated, the claim alleges a violation of the Agreement because the Missouri Pacific Railroad clerks who performed the rating, routing and billing for the Missouri Pacific Truck Lines at Houston were in Seniority District 5, while those in Baytown were in Seniority District No. 27.

It is well settled that Carrier management is free to determine the way in which the work and operations are to be performed and conducted in the interest of efficiency and economy except insofar as that freedom may be limited by law or agreements. (Awards 12991, 12419, 11776.) With this principle in mind we must carefully consider the Memorandum Agreement of February 1, 1967, heretofore quoted. By that agreement the Missouri Pacific Railroad contracted with the Clerks to permit them to perform certain work for the Truck Lines. The February 1, 1967, Agreement contains no restriction as to the location where such work will be performed, and this

Board cannot read such a restriction into the Agreement. The Missouri Pacific Truck Lines has the prerogative of determining where the work is to be performed. The Missouri Pacific Railroad met its obligation under the Agreement by permitting its rail clerks, even though located at Houston, Texas, to perform the work. We find, therefore, that the Agreement was not violated.

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 21st day of May 1970.