

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company, that:

1. The Carrier violated the terms of the prevailing Agreement between the Order of Railroad Telegraphers and the Southern Pacific Railroad Company particularly Rules 1, 2(b), 14, 16, 17, and 19 when on February 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, March 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 24, 25, 26, 30, 31, April 1, 2, 3, 6 and 7, 1964 it permitted, required or caused employees not covered by this Agreement to place freight into and take freight from the Southern Pacific Station at Safford, Arizona at times outside the assigned hours of the Agent at Safford. Employees of the Pacific Motor Trucking Company, truck drivers and warehouse employees, handle both Pacific Motor Trucking Company and Southern Pacific Company freight into and from the station at Safford, Arizona at times outside the assigned hours of the Southern Pacific Agent

2. The Carrier shall compensate the following named employee or his successor accordingly:

(a) Agent-Telegrapher L. E. Adams, regularly assigned to the Agent-Telegrapher position, Safford, Arizona, assigned hours 8 am 12 noon 1pm to 5pm Monday through Friday, Saturday and Sunday, rest days, calls and overtime as indicated for the following dates:

February 17th
1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime 5PM to 6PM

February 18th
1 call between 6am & 8am
1 call between 2am & 3am
2 hours 30 minutes overtime
5pm to 730pm

February 19th

1 call between 6am & 8am
1 call between 2am & 3am

February 21st

1 call between 6am & 8am
1 call between 2am & 3am
2 hours 30 minutes overtime
5pm to 730PM

February 25th

1 call between 6am & 8am
1 call between 2am & 3am
2 hours overtime between
5pm and 7pm

February 27th

1 call between 6am & 8am
1 hour 30 minutes overtime
between 5pm and 630PM

March 2nd

1 call between 6am & 8am

March 4th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 6th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 10th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 12th

1 call between 6am & 8am

March 16th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

February 20th

1 call between 6am & 8am
1 call between 2am & 3am
3 hours overtime between
5pm and 8pm

February 24th

1 call between 6am & 8am
1 hour 45 min. overtime
between 5pm and 645PM

February 26th

1 call between 6am & 8am
1 call between 2am & 3am
2 hours overtime between
5pm and 7PM

February 28th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 3rd

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 5th

1 call between 6am & 8am

March 9th

1 call between 6am & 8am

March 11th

1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm & 6pm

March 13th

1 call between 2am & 3am

March 17th

1 call between 6am & 8am
50 minutes overtime between
5pm and 550pm

March 18th
1 call between 6am & 8am
1 hour overtime between
5pm and 6pm

March 23rd
1 call between 6am & 8am

March 25th
1 call between 2am & 3am
2 hours overtime between
5pm and 7pm

March 30th
1 call between 6am & 8am
1 hour 30 minutes overtime
between 5pm and 630pm

April 1st
1 call between 2am & 3am
1 hour overtime between
5pm and 6pm

April 3rd
1 call between 6am & 8am
1 call between 2am & 3am
2 hours 30 minutes overtime
between 5pm and 730pm

April 7th
1 call between 7am & 8am
1 call between 2am & 3am
1 hour 50 minutes overtime
between 5pm and 650pm

March 19th
1 call between 2am & 3am
50 minutes overtime between
5pm and 550pm

March 24th
1 call between 6am & 8am

March 26th
1 call between 6am & 8am

March 31st
1 call between 6am & 8am
1 call between 2am & 3am
1 hour overtime between
5pm and 6pm

April 2nd
1 call between 6am & 8am
1 call between 2am & 3am

April 6th
1 call between 6am & 8am

(b) For each and every occurrence on each and every date subsequent to April 7, 1964 that the Carrier causes this violation to occur a call or overtime shall be paid to Agent-Telegrapher L. E. Adams, or his successor, when the violation occurs at the Safford, Arizona station.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute arose at Safford, Arizona after the Carrier had reduced the service at Safford to a one-man agency manned by an agent-telegrapher, Claimant L. E. Adams, and transferred the work of handling the LCL freight to employees of the Pacific Motor Trucking Company outside the assigned hours of the agent at Safford. Claim was made for a call payment on specific dates beginning February 17, 1964 and continuing on each and every subsequent date subsequent to April 7, 1964 that the Carrier continued to violate the Agreement. The Employees requested a joint check of the

are made available through lease arrangements. LCL shipments transported by PMT are the responsibility not of the railroad but of the PMT and consequently are not railroad LCL even though a portion may be on railroad billing.

"There is no railroad business to conduct in connection with arrival, unloading and loading of LCL freight in custody of the PMT at Safford and certainly no SP employe including the claimant here has any agreement right to insist they be called to assist PMT in the performance of PMT work.

"While you state that 'This claim is based on the transfer of work, accruing to the position of agent-telegrapher . . .', I pointed out this is not work accruing to the Agent-Telegrapher and furthermore that there was no transfer of work since the line haul trucks for many years had operated on a schedule having arrival times at Safford outside the hours of the Agent-Telegrapher during which time the Agent-Telegrapher had never been called outside of his hours to perform the service here claimed. I further pointed out as a point of information that SP had maintained a Clerk-Warehouseman and a Cashier at Safford from 1936 to around May of 1959.

"At various points in your submission you attempt to downgrade the lease as being a ' . . . paper arrangement by which the Southern Pacific Company and its [wholly] owned [subsidiary], the PMT Company attempt to circumvent the Telegraphers' Agreement.' As stated previously, the Telegraphers' Agreement is in no way involved in the first place, and secondly, the fact that the PMT is a wholly owned subsidiary of the Southern Pacific Company is beside the point. Both are separate and distinct corporations and as such are separate entities and the lease, which is identical to numerous other leases involving PMT at several other stations, has full force and meaning.

"With respect to your claim that PMT employes are performing the Agent's work after 5:00 PM, this can only be classed as assertion since you fail to properly detail with specific facts and figures just what you are placing claim against. In any event, our records indicate PMT employes were performing PMT work during that time the same as their duties performed when the Agent was there.

"Since the facts in this case do not establish that work reserved exclusively to members of your craft has been delegated to employes not covered by the TCU Agreement, the claim is not supported by any agreement provision or other references cited by you and it is denied."

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that the Agent-Telegrapher during his regular assigned hours performs work in the handling of LCL freight. It concludes, that since the station at Safford, Arizona is a "one man station", all the work at that station belongs to the Agent-Telegrapher at that station.

The difficulty with the Petitioner's position is that even though Safford is a "one man station", the theory based upon "one man station" is not applicable in the instant case for the reason that the work involved in the instant dispute is not the Carrier's work but is in fact the work of Pacific Motor Trucking Company, a corporation.

The record reveals that the Carrier and Pacific Motor Trucking (hereinafter referred to as P.M.T.) entered into an agreement whereby the Carrier leased to P.M.T. a portion of its building at the Safford station, to be used by P.M.T. as a freight terminal. Under the terms of said agreement, P.M.T. could utilize said facilities to move its truck freight in and out of said terminal. L.C.L. freight is unloaded from P.M.T. trucks and also loaded into P.M.T. trucks. The Record reveals that the Petitioner claims that Agent-Telegrapher should be present to assist in such work, in that "he should be present to check the items of freight against the waybills".

The separate entity of P.M.T. can not be questioned nor can its corporate identity be challenged notwithstanding the fact that P.M.T. is a wholly owned subsidiary of the Carrier. Petitioner has presented no evidence justifying such question or challenge. It must be further stated that the lease and agreement between the Carrier and P.M.T. is valid and has not been shown to be defective in any manner.

In relation to the claim of Petitioner that Claimant assisted in checking items of freight against the waybills, such assistance can not be considered as proof entitling the claimant to claim exclusive right to all work of handling freight at said station. This must be so, in light of the fact that the freight was under the sole control and custody of P.M.T. and was not freight belonging to Carrier. The employees of Carrier have no contractual right to claim the work in the instant matter since the work involved could not be offered by the Carrier inasmuch as it had no control over the work belonging to P.M.T. Support is found in Award 12303, 12451, 14366, 14818, 15545, 15546, 17721.

We concur in the conclusion expressed in Award 13056 wherein it is stated that "* * * The Scope Rule can not extend to work that does not belong to the Carrier; it applies only to that work Carrier has power to offer. * * *"

Accordingly, the Board must conclude that the work involved in the instant claim was not under the control of the Carrier and therefore the Claimant is not entitled to make claim for such work.

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