

Award No. 19123
Docket No. CL-15834

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, 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-5792) that:

(1) The Southern Pacific Company violated the Rules of the Clerks' Agreement at Raymer Yard Office, Los Angeles, when, effective with the close of business September 14, 1961, it abolished two positions of Car Clerk at the Raymer Yard Office and improperly assigned work thereof to employees covered by the Telegraphers' Agreement; and

(2) The Southern Pacific Company shall now compensate Clerks O. E. Loy and Jack Schlachter, incumbents of the abolished positions, for eight (8) hours each day commencing September 15, 1961, in addition to any other compensation, however derived, and continuing during period and for dates that each of these named-employees were illegally deprived from performing duties assigned to their positions during period of abolishment.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955 including 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 made a part of this dispute.

On September 12, 1961, Carrier notified Mr. O. E. Loy and Mr. Jack Schlachter (hereinafter referred to as the Claimants) that effective at close of business September 14, 1961, their positions would be abolished.

Mr. O. E. Loy at that time was regular incumbent of Car Clerk Position No. 21, Raymer Yard Office, assigned hours 4:00 P.M. to 12:00 M., Monday through Friday, rest days Saturday and Sunday, rate \$20.01 per day.

Mr. Jack Schlachter was temporary incumbent of Car Clerk Position No. 20, assigned hours 12:00 M. to 8:00 A.M., Monday through Friday, rest days Saturday and Sunday, rate \$20.01 per day.

OPINION OF BOARD: On September 12, 1961, Carrier notified Claimants that effective at close of business September 14, 1961, their positions would be abolished, due to impending strike at General Motors plant. Claimant

Loy was regular incumbent of Car Clerk Position No. 21 and Claimant Schlachter was temporary incumbent of Car Clerk Position No. 20 at Carrier's Los Angeles Division at Gemco, located within the area which is broadly termed Raymer, California.

Position No. 21 was reestablished on September 21, 1961 and Claimant Loy returned to his former position. Position No. 20 was reestablished September 25, 1961 and following close of bulletin, was reassigned to Claimant Schlachter on October 21, 1961.

During the period of six (6) days that the General Motors Plant employees were on strike, petitioner alleges that although Carrier abolished the Claimant's positions due to emergency, telegrapher-clerks retained at Gemco did perform work of the abolished positions. As a result, Carrier primarily violated Article VI of the August 21, 1954 Agreement, which provides that in an emergency, when Carrier's operations are suspended in whole or in part, positions may be abolished when work on those positions no longer exists or cannot be performed.

Carrier asserts that the duties performed by the telegrapher-clerks during the six (6) day emergency are performed daily by them at Gemco and are part of the assignment of the job and they were doing no different work on the six (6) days than they did on their regular assignment.

From the facts adduced from the record it appears that the work in question, assigned to these positions was performed by Claimants prior to and subsequent to the abolishment period of six (6) days. Two telegrapher-clerks, who admittedly performed the work assigned to the abolished positions, gave written statements that the work they performed during the six (6) day emergency period was not part of their normal-regular assignments as telegrapher-clerks prior to the abolishment of Positions No. 21 and 20. That when these positions were reestablished they discontinued performing the clerical work in question and reverted to their regular duties.

Since Carrier never refuted these statements, the Board must find that the work continued to exist and was improperly assigned to employees without the Clerks' Agreement.

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 Carrier violated the Agreement.

AWARD

Claim sustained. Carrier shall compensate Claimants for eight (8) hours pay, commencing September 15, 1961 through September 21, 1961, less other compensation earned by them during this six (6) day period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.