Award No. 19124
Docket No. CL-15979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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-5824) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Brooklyn Stores Department when on December 20, 1962, it unilaterally removed the work of straightening and righting shifted freight on cars and transferring freight from bad ordered cars therefrom and assigned it to employes not covered thereby; and,

(b) The Southern Pacific Company shall now be required to restore such work to the scope and operation of the Clerks' Agreement; and,

(c) The Southern Pacific Company shall now be required to allow Mr. H. H. Probst, his substitutes and/or successors, eight hours' additional compensation at the pro rata rate of Crane Engineer December 20, 24, 26, 1962, and each date thereafter that similar violations occur, extent thereof to be determined by joint check of Carrier's records, until the involved work is returned to the scope and operation of the Clerks' Agreement.

EMPLOYES' 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 employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Since the inception of the first Agreement between the parties, in 1922, up to the time the within dispute arose, whenever it was necessary to have shifted freight re-aligned or to have freight transferred from bad ordered cars, the cars would be spotted on the Stores Department track, Employes' Exhibit "A," and the work would be performed by Stores Department employes covered by the Agreement using lift trucks and crane.

By letter dated January 23, 1963 (Carrier's Exhibit "B"), Petitioner's Division Chairman presented claim to Carrier's Assistant Purchasing Agent, Eugene, Oregon, contending that Carrier violated the current agreement when it allegedly removed the work of **operating cranes** in straightening and righting loads on cars which had shifted and intransferring loads from bad-order cars, from the Stores Department clerks and transferred the work to employes outside the covrage of the agreement. By letter dated February 25, 1963 (Carrier's Exhibit "C"), Carrier's Assistant to Purchasing Agent declined the claim. By letter dated March 6, 1963 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed claim to Carrier's Manager of Stores, stating that contentions embodied in the Division Chairman's letter of January 3, 1962, wre to be considered as part of the appeal. By letter dated April 23, 1963 (Carrier's Exhibit "E"), Carrier's Manager of Stores denied the claim. By letter dated May 10, 1963 (Carrier's Exhibit "F"), Petitioner appealed the claim to Carrier's Assistant Manager of Personnel, stating that contentions as contained in Division Chairman's letter of January 23, 1963, were to be considered embodied as part of the appeal. Under date of January 26, 1965 (Carrier's Exhibit "G'), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The very essence of the claim before us, succinctly stated is that the Organization, as represented by the Clerks, alleges that the Carrier "unilaterally removed the work of straightening and righting shifted freight on cars and transferring freight from bad ordered cars therefrom and assigned it to employes not covered thereby."

The Brotherhood of Railway Carmen of America being a Third party in interest, was duly advised of the pendency of the instant dispute and declined to participate.

Carrier interposes a procedural objection at the very beginning, contending that the claim now before us is substantially different from the one originally processed on the property. We have carefully examined both such claims, and although there is a difference in the wording of the two claims, this difference does not constitute such a substantive variance that it would enable us to agree with Carrier's position. Both claims are essentially the same, involving the same incidents, same dates and praying for the same relief.

The Organization contents that the work of straightening loads and transferring them from "bad order" cars has always been done by the Clerks, and in furtherance of this position have presented this Board with evidence from employes, some of whom have worked in the Stores Department for forty years or more, to the effect that it has always been the practice for Clerks to perform the work at issue.

The Carrier counters with the proposition that the Scope Rule of the Agreement between the parties is "general" in nature, that in order for the Organization's position to be sustained it must show by a preponderance of evidence that the work by custom, practice and tradition has been performed by the Clerks, and that this custom, practice and tradition has system-wide rather than local applicability.

The Organization urges us to adopt the position that the above principle is a "time-worn" theory and should be reversed. If we were to agree with

the Organization in this matter, we would be required to disregard a long series of Awards enunciating that principle. To disregard or to ignore them would do violence to the case law of this Board, which has been developed since the establishment of the Board itself. Even if our pre-delictions were to sustain the Organization's position, we would have to reason that the long series of awards referred to, were demonstrably erroneous. We are unable to follow such a course. The Scope Rule of the Agreement applies to the Carriers' operations on a system-wide basis; hence the practice itself must be system wide. There is no evidence in this record to support such a contention, all evidence having been presented by the Organization and carefully evaluated, has indicated that the practice in this instance was localized. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

AWARD

Claim denied.

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.

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