

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19318
Docket Number CL-17339

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(Southern Pacific Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6338) that:

(a) The Southern Pacific Company violated the Agreement at West Oakland, California, when it required and/or permitted Mechanical Department Lead Carmen to perform clerical work reserved to employees covered by the Clerks' Agreement; and,

(b) The Southern Pacific Company shall now be required to allow compensation as indicated to the below-named employees and their successors and/or substitutes, if any, in addition to any other earning they may have earned, for April 1, 1962, and continuing for each date thereafter until clerical work being performed by Lead Carmen is restored and assigned to employees covered by the Clerks' Agreement:

1. Harriett Golfos, unassigned employee, eight (8) hours compensation each day at the pro rata rate;
2. Louis Donato and John Francis, regularly assigned employees, each to receive eight (8) hours compensation each day at the overtime rate.

OPINION OF BOARD: The Organization contends that the Agreement was violated when Carrier at West Oakland, California, required and/or permitted Lead Carmen, not covered by the Clerks' Agreement, to perform clerical work reserved to Clerks. In support of their position, the Organization asserts that in the Freight Train Yard Car Foreman's office, the clerical work is assigned to the Lead Carmen. Their duties, it claims, involves answering telephone calls, maintaining records of the laying off and reporting back of employees, preparing form CS 7153 - Mechanical Department Report of Terminal Delays, keeping records of all bad order cars, preparing daily information of cars handled on inbound and outbound freight trains and the preparation of monthly reports from this information. Assigning this work to employees of the Carmen craft, which work has historically been performed by Clerks, violates its Scope Rule, Petitioner believes.

Carrier defends on the theory that Lead Carmen are merely performing duties incidental to their assignment, and that Clerks do not have an exclusive right to perform the disputed work.

This Board cannot agree with the contention of Carrier that the work in question is merely incidental to the Carmen's assignment. A reading of Rule 104, Classification of Work, under the Carmen's Special Rules, makes it abundantly clear that there is no similarity between the work in question and the work reserved to Carmen by their Agreement.

Rather, we are of the opinion that the disputed work is of the kind that has been performed by Clerks historically in the past. It is clerical work and must be performed by employees of the Clerks' Organization. To hold otherwise we would be obviating the Clerks' Scope Rule which reserves to the Clerks clerical work customarily and historically performed by employees of their craft. The disputed work performed in the Freight Train Yard Car Foreman's office is this type of clerical work. To allow employees not covered by the Clerks' Agreement to perform this work would infringe on the collective bargaining agreement, duly negotiated by the parties hereto. This we are unwilling to do.

However, we are compelled to dismiss that portion of paragraph (b) of the Statement of Claim having to do with unnamed **claimants**. We concur in the interpretation given to Section 1(a) of Article V, Agreement of August 21, 1954, holding that where the contract provides that claims must be presented "by or on behalf of the employees involved", a claim filed on behalf of an unnamed **claimant** is so lacking in specificity as to be barred by the contract. The Organization contends that National Disputes Committee Decision 19, interpreting Article V of the August 21, 1954 Agreement, is controlling herein and that the successors and/or substitutes are adequately identified. However, that Decision was premised on the fact that the term "successors" as used in the claim referred to the successors of the named **claimants** as the incumbents of certain positions. This, the Committee felt adequately identified them. Such was not the case here as the Claimants were not the incumbents of specified positions. Consequently, their successors and/or substitutes could not be sufficiently identified.

Relative to the named **claimants**, Harriett Golfos, Louis Donato and John Francis, we believe the proper measure of damages is the amount they would have earned if allowed to perform the work in question less their actual compensation for the claimed period.

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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 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 violated in accordance with the Opinion.

A W A R D

Claim sustained in part and dismissed in part per the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.

Serial No. 285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 2 to Award No. 19318

Docket No. CL-17339

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Southern Pacific Company (Pacific Lines)

Upon application of the representatives of the Employees involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Organization seeks an interpretation to Award No. 19318 which was the subject of a prior interpretation dated February 21, 1975. The Organization has construed Interpretation No. 1 to Award No. 19318 to mean that since the Board did not specifically refer to the phrase "less their actual compensation for the claimed period" in Interpretation No. 1, the Board thereby intended to award the named claimants monetary damages. In order to effect a settlement of the claim, the Organization requests the Board to order an arbitrary allowance of four (4) hours per day to each claimant during the claimed period without regard to other earnings received by them during such period.

It is indeed unfortunate that rather than clarify Award No. 19318, Interpretation No. 1 had the effect of further obfuscating it. The Board in Award No. 19318 held, in pertinent part: "Relative to the named claimants, Harriett Golfos, Louis Donato and John Francis, we believe the proper measure of damages is the amount they would have earned if allowed to perform the work in question less their actual compensation for the claimed period". In interpreting the foregoing language, the Board, in Interpretation No. 1 stated "They (the named claimants) are entitled to be compensated for the time they would have been used to perform the clerical work in question had carrier not violated the agreement by assigning this work to Lead Carmen".

The Organization reads this language to mean that the Board purposefully dropped any reference to the phrase "less their actual compensation for the claimed period" when they explained the proper measure of damages contemplated by Award No. 19318. Such conclusion, however, is clearly erroneous. The Board never intended to modify Award No. 19318 by foregoing any reference to the actual earnings of the claimants as suggested by the Organization. In retrospect it is clear how this erroneous conclusion was arrived at. This Board, in the instant Interpretation, unequivocally adheres to the Opinion in Award No. 19318 which held that the proper measure of damages for Harriett Golfos, Louis Donato and John Francis is the amount they would have earned if

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allowed to perform the work in question less their actual compensation for the claimed period. We cannot be more explicit.

This Board declines to order an arbitrary allowance of 4 hours per day to each claimant as requested by the Organization since that would involve an expansion of Award No. 19318 and a violation of Section 3, First (m) of the Railway Labor Act.

Referee Robert M. O'Brien, who sat with the Division as a neutral member when Award No. 19318 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.