

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19465
Docket Number CL-17444

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6417)
that:

(a) The Pacific Fruit Express Company has violated and continues to violate the current Agreement by permitting employees of another class or craft to perform work properly falling within the scope of the Clerks' Agreement, namely, allowing Carmen to drive a tractor to move trailers around the yard and unload trailers from flatcars at Roseville;

(b) The Pacific Fruit Express Company shall now be required to compensate Mr. F. E. Schmidt and/or his successor or successors in interest, namely, any other employee or employees who may stand in the same status as claimant and who may be adversely affected, one day's pay at the pro rata rate of Truck Driver for date of June 10, 1965, in addition to any other compensation received for that date, and for each subsequent date that a similar violation occurs;

(c) That such service, when required, be performed by employees covered by the Clerks' Agreement.

OPINION OF BOARD: On May 12, 1965 Carrier placed a new piece of equipment in service at its Roseville Shops. The use of a Terminal Yard Hustler or Trailer Spotter resulted in assignment to Carrier's employees of work formerly contracted out to PMT drivers. The equipment can be fairly described as an over the road tractor in chassis form. That is, it can function as a tractor to move a trailer, but it lacks the essentials for use other than moving or "spotting" trailers in a limited area.

The functions to be performed with the Trailer Spotter are listed by Carrier as follows:

- "(a) Ramp and/or de-ramp trailer from flat car.
- (b) Relocate trailer to specific repair area within the Shop.
- (c) Test airbrakes.
- (d) Test clearance and directional lights.
- (e) Raise front end of trailer for necessary repairs to landing gears."

When the equipment, referred to above, was put into service Carrier assigned its operation to employees represented by the Brotherhood of Railway Carmen. The Clerks have protested Carrier's assignment, alleging a violation of their Agreement. They assert the right to operate the equipment by written Agreement and aver that there is no Rule support for assignment of the operation of such equipment to Carmen.

The Agreement, relied upon by the Clerks' Organization is dated December 5, 1939 and was signed by representatives of Carrier, the B. of R.C. of A. and the B. of R. & S. C. Its purpose was to clarify the representative status of the two organizations. It states (in pertinent part):

" * * * * *

On December 5, 1939, conference was had between the General Chairman of the Brotherhood of Railway Carmen of America and the General Chairman of the Brotherhood of Railway and Steamship Clerks, representing Pacific Fruit Express Company employees in these crafts, and the management, at which meeting it was agreed that the following employees covered by agreements with the Brotherhood of Railway Carmen of America prior to November 1, 1939, would be relinquished to the jurisdiction of the Brotherhood of Railway and Steamship Clerks:

Laborers loading and unloading or storing material, cleaning store houses and store yards, but not laborers used in cleaning car shop yards or cleaning around material delivered to car shop yards.

Store Helpers.

Store Deliverymen.

Truck Drivers, Tractor, Portable Crane and Lift Truck Operators coming under jurisdiction of Stores Department.

* * * * *

An award of the Second Division (3283) interpreted the December 5, 1939 Agreement. Carmen claimed that Carrier's assignment of clerks to operate tractors used in moving refrigerator cars in the Los Angeles Shops was a violation of their Agreement. They relied on Rule 42, which described Carmen's work as follows:

"1. (a) * * * Carmen's work shall consist of building, rebuilding, maintaining, dismantling (except wood bodies of cars for retirement, derrick or crane operator and crane foreman; and all other work generally recognized as carmen's work and including the following classifications:'

'(b) * * * Derrick or Crane Operator. Duties shall consist of the operation of derrick or crane, * * * permissible switching of cars within shop yards and buildings.'

'(c) * * * Derrick or Crane Foreman. Duties shall consist of directing the work in connection with derrick or crane. He must be familiar with signals and capable of directing the movement of crane or derrick with or without cars, throughout the shop limits.'

The Second Division, interpreting the tri-partite Agreement of December 5, 1939 said:

"Under the provisions of the tri-partite agreement of December 5, 1939, between the carrier, Brotherhood Railway Carmen and Brotherhood of Railway and Steamship Clerks, jurisdiction of tractor, portable crane and lift truck operators was relinquished by the carmen and vested in the clerks."

Thus there has existed, since Award 3283 was issued on June 24, 1959, an authoritative interpretation by a Division of this Board holding that clerks are entitled by the tri-partite agreement to work involving the movement of cars within the shops. This effectively disposes of Carrier's argument that the tri-partite Agreement cannot apply here because of the words "under the jurisdiction of Stores Department." Carrier says the new equipment was placed under the jurisdiction of the Mechanical Department and this necessarily removes jurisdiction from the clerks. This contention is incorrect. If it were true the entire question of work assignment could be unilaterally re-determined by Carrier simply by an administrative change. In Award No. 3238 the Board recognized that the clerks were entitled to perform work with a function almost identical to that of the trailer spotter within the car shops.

Nor are we convinced of the validity of Carrier's argument that the fact that PMT drivers performed this function prior to the use of the trailer spotter conclusively shows that clerks have no right to it. The performance of the work by outside forces does show that Carrier sub contracted it without challenge. However, once Carrier made an assignment to its employees it was obliged to assign the work in a manner consistent with its Agreement.

Since we are dealing with an Agreement specifying which of two crafts is to perform certain work, Board decisions concerning the showing of exclusive assignment are inapplicable. Our interpretation of the tri-partite Agreement compels the conclusion that Carrier's clerical employees should have been assigned to operate the trailer spotter. We are not persuaded that Carrier correctly applied the principle of incidental work to this assignment. On the property the

Carrier insisted that the equipment was a tool, which Carmen used in making repairs. The record shows that this principle has no proper application here. The operator is required to drive, and to operate brakes and lights. He does nothing other than a normal operating function. A ground man (Carman) may accompany the operator to check mechanical operations. This does not alter the matter of assignment of the operating functions.

Notice of this dispute and an opportunity to be heard was given to the Brotherhood of Railway Carmen. The Railway Employees Department declined to participate, except to state that this Division lacks jurisdiction to enter an award affecting the rights of Carmen.

The claim will be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained; provided however that the Claimant or his successor or successors will be compensated in the amount they would have earned, less actual compensation for the claimed period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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