

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21006
Docket Number CL-21044

Frederick R. **Blackwell**, 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-7828)
that:

(a) The Pacific Fruit Express Company violated the Agreement when it required and/or **permitted** employes of the Southern Pacific Transportation Company, not covered thereby, to inspect and start mechanical refrigerator cars at Indio, California, including the setting and regulating of thermostats, which **work** has been historically and traditionally performed exclusively by **Agreement-covered employes**; and

(b) The Pacific **Fruit** Express Company shall now be required to allow Mr. P. A. **Stenrose** eight (8) hours' compensation at rate of Agent Clerk E-2, Coachella Valley, \$36.51 per day, beginning May 1; 1971, and continuing each day thereafter while the violation set forth in paragraph (a) continues.

OPINION OF BOARD: This Scope Claim is based on the allegation that the work of inspecting the Carrier's refrigerator cars at **Indio, Coachella** Valley, California, has historically and exclusively been performed by this Carrier's clerical force, and that when the Carrier established a position of Agent-Clerk at Indio on May 21, 1971, the Carrier, instead of assigning such work to the incumbent thereof, **permitted** such work to continue to be done by **employees** of the Southern Pacific Transportation Company.

The **Carrier's** principal defense is that no Scope violation has occurred because the disputed work did not belong **to this** Carrier, but instead, was the work **of the** Southern Pacific Transportation Company.

The record shows without contradiction that, at least since 1969, this Carrier has established a seasonal Agent-Clerk position in Coachella Valley, beginning in May or June and ending in June or July. In 1971 the seasonal agency was established on June 2 and terminated on July 9. During the remainder of the year (i.e., other than the period of the seasonal agency), any of the disputed work required to be performed would be **performed** by railroad **employees** of the Southern Pacific Transportation Company. The record also shows without contradiction that this Carrier and the Southern Pacific Transportation Company have **been** signatories since 1906 to a "Protective Service Contract", under which this

Carrier provides **services** regarding perishable shipments on the railroad of the Southern Pacific Company.

In these facts the Employees of this Carrier have no agreement right to any work performed by **employees** of the Southern Pacific Transportation **Com-**
pany. All of the work concerning the handling of perishable shipments on the property of the Southern Pacific Company belongs to such company and it can delegate as much or as little of such work to the herein Carrier as it may decide. In short, since the herein Carrier does not own and control the work, it cannot be faulted because it does not prohibit the owner of the work, the Southern **Pacific**, from having some of **the** work performed by its own employees. For a similar holding, see Third Division Award No. 7194. The claim will be denied.

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 respectfully 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 not violated.

A W A R D

Claim denied.

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NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

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