

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21977
Docket Number CL-21491

Irwin M. Lieberman, Referee

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

PARTIES TO DISPUTE: (

(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of *the Brotherhood*,
GL-8014, that:

(a) The Pacific Fruit Express **Company** violated **the** Clerks' Agreement at Brooklyn, Oregon, when it instructed shippers' **employees** and/or loaders, not covered thereby, to initially start **Mechanical** refrigeration units at loading points Brooks, **Hubbard and Newberg**, Oregon, which work had always been exclusively **performed** by **clerks** at Brooklyn, Oregon; and,

(b) The **Pacific Fruit Express** Company shall **now** be required to compensate **employees** R. L. Nees, D. W. Graf, R. D. Ward and J. L. Frank, for 32 hours, 26 hours and 40 minutes, 42 hours and **40** minutes and 26 hours and 40 minutes respectively, at **time** and one-half rate of their respective **positions as** specifically set forth in Exhibit A, and similar rest day call **compensation for** each of the above **named claimants** for **like** violations occurring subsequent to July 25, 1973.

OPINION OF BOARD: Claimants, employed at Brooklyn, Oregon, are seeking compensation for various dates starting June 2, 1973, when mechanical refrigerator cars were started by shippers at Brooks, Hubbard and **Newberg**, Oregon. **Claimants** allege **that** Carrier employees working under the Clerks' Agreement at Brooklyn, **have** exclusively performed the work of starting mechanical refrigerator cars destined for loading at Brooks, Hubbard and **Newberg**; and when Carrier **instructed** or permitted shippers to perform this function (consisting of pushing a stop-start button) at the point of **loading**, this removed work from the scope of their agreement and, **more** particularly, violated Article I, Paragraph **(e)** of the **Agreement** of April 2, 1973 which provides:

"Outside of established Car Shops, **when** not **in** direct connection with repairs, work performed by **PFE** employee

"on refrigeration units of refrigerator cars, trailers, containers and analogous equipment **consisting** of starting, refueling, protective service **and pre-service inspections**, lading and pre-load **inspections**, controlling temperatures by adjustment of **controls** while under load, or in preparation to load, as well **as** preparation of related records, will be **performed** by employees under the **Clerks'** Agreement; it **is also** understood that Clerk **employees** may perform minor service replacements or adjustments as part of said duties."

Before turning to the merits of the Claim, it **is** necessary to deal with a time limits defense raised by the Carrier in **its submission**. The Carrier alleges a procedural defect **in that the** Organization did not **comply** with Rule 23 (c) which calls for **notification** by the Organization to Manager of Personnel in **writing** that his decision was rejected. *In this regard*, the first **sentence** of Paragraph 3 of Rule 23 (c) reads:

"The requirements outlined in paragraphs 1. **and 2.**, pertaining to appeal by the **employee** and decision by the Carrier, shall govern in appeals taken to **each** succeeding officer, except **in cases** of **appeal** from the decision of the highest officer designated by the Carrier to handle such disputes...."

Mr. Walsh is the highest officer designated to handle claim and grievances, and appeals from his decision to this Board do not require notice of rejection of his decision in writing. **Thus, the claim** is properly before the Board.

The Carrier defends against the validity of **the Claim** on several grounds, arguing that only a trivial amount of **disputed** work is performed when a shipper pushes a start-stop button **in** a mechanical refrigerator car, that Carrier clerks at Brooklyn have **in the** Past released such refrigerator cars **in** an idling configuration **which** were later started by the shipper, that those, on occasion, **that** had been started at Brooklyn were shut **down** by the shipper at Brooks, **Hubbard** and **Newberg** for various health, safety and **convenience reasons** and later restarted, and, finally, that the April 2, 1973 **Agreement** is a division-of-work agreement between clerks and **carmen and**, as Such, does not give to clerks **exclusive** rights to Start **mechanical refrigeration units** when this work is performed by the shipper at its **facility**.

Carrier's trivial or &minims argument is not a valid basis for violations of the agreement, if, in fact, the **agreement reserves** the work to clerks. No such reservation was **accomplished** by the Scope Rule and Carrier's argument with respect to the purpose of Paragraph **(e)** of the April 2, 1973 **Agreement** has merit. **As we read** the language of that agreement, it quite clearly **pertains** to "work performed by **PFE** employees" and defines various work jurisdictions between **carmen** and clerks. When consideration is **given** to Carrier's contentions as to the practice described supra, we do not find **that** the Agreement was violated when a shipper pushed a **button** to start or stop a mechanical refrigeration unit in a car located at **its** facility. For the foregoing reasons, the claim **must** 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 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 not violated.

A W A R D

Claim denied.

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

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **March 1978**.