

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22061**  
Docket Number CL-21878

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company  
( (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(**GL-8244**) that:

(a) The Southern Pacific Transportation Company violated Article V of the **February** 10, 1971 Agreement when it failed and refused to compensate Mrs. **Justina** Savela Ortiz, widow of **employee** Frank Pablos Ortiz, accidentally killed on March 5, 1973, in accordance with the terms ~~thereof~~; and

(b) The Southern Pacific Transportation Company shall **now** be required to allow Mrs. **Justina** Savela Ortiz the sum of \$90,000 plus interest at the rate of 6% compounded annually from sixty (**60**) days following the death of Mr. Frank Ortiz, March 5, 1973.

OPINION OF BOARD: On March 5, 1973, **Employee Ortiz** was accidentally **killed** while driving a Carrier-owned vehicle to pick up a crew (according to the Organization) or to drop off supplies (according to Carrier).

The Carrier and the Organization are parties to a February 10, 1971 agreement which provides benefits when **employees** die or are seriously injured while "riding in, **boarding**, or alighting **from** off-track vehicles authorized by the Carrier" and are "1) deadheading under orders or 2) being transported at carrier expense."

The agreement contains exclusions, as well as coverage conditions.

The Organization's claim for **\$90,000.00 (\$100,000.00, minus a \$10,000.00 set-off under a group policy)** was denied by Carrier, because its insurance carrier "denied **coverage**." A letter from the

insurance carrier, which was attached to the denial, stated that coverage would not be provided inasmuch as the **employee was:**

"...performing the duties of his occupation, namely delivering supplies, rather than deadheading or being transported..."

In response to the Organization's April 21, 1975 appeal, (which cited the then recently issued Award 20693) Carrier replied that the **employee** was not engaged in activities contemplated by the "Off Track" provisions of the agreement.

We have studied the record before us at length and, of course, we have confined our review to those items properly before us for our consideration.

In its submission to this Board, the Carrier urges that "it **was never** intended that such an employee who was directed to deliver material and supplies as part of his regularly assigned duties would be **covered...**" In this regard, Carrier insists **that** we may not conclude that the employee was "deadheading under orders" or "being transported."

To be sure, Award 20693 was adopted some time after the death which gave rise to this dispute, but nonetheless, we feel that Award 20693 controls this case. Moreover, we do not agree with Carrier that said decision is palpably erroneous.

The Carrier did not contest the **demand** for interest while the **matter** was under review on the property. Thus, we will sustain the **claim** in its entirety.

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;

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.