

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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 that:

Mr. Verne Simpson, former occupant of position of Auto Mail Messenger, San Francisco, California, be provided with five new automobile tires, or monetary compensation in lieu thereof.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The employees involved in this claim are covered by that agreement.

As a result of Arbitration Award in 1927, which became effective as of January 1, 1927, there were established for all positions then in existence on Southern Pacific (Pacific Lines) and coming within the scope of Clerks' Agreement with the carrier, classifications and rates of pay, which classifications and rates of pay are part and parcel of our agreement with the carrier, and subject to change only by agreement between the employees and the carrier, through orderly and prescribed procedure under the provisions of the Railway Labor Act and our working agreement with the carrier.

Following the Arbitration Award of 1927, as hereinbefore referred to, the classifications and rates of pay were, for ready reference, set up on forms designated and thereafter known as Form C-21 Final.

For the Board's ready reference, we attach hereto and make a part of this submission as Employees' Exhibit "A," copy of Page 16, Form C-21 Final, Coast Division—this page shows, at the bottom of the sheet, Auto Mail Messengers, 383, 384 and 385, final rate \$6.60 per day, present rate \$7.80 per day, by virtue of general wage increases granted effective August 1, 1937, and December 1, 1941, of 40¢ and 80¢, respectively, per day.

Position No. 385 is the position that was occupied by Mr. Verne Simpson, claimant in this case. Mr. Simpson assumed Position No. 385 as Auto Mail Messenger on December 21, 1937, and continued thereon until the position was abolished and another one created January 4, 1943, at which time claimant made displacement on position of Yard Clerk.

From the time these positions of Auto Mail Messenger were set up and rated in Form C-21 Final (See Employees' Exhibit "A") approximately fifteen years ago, the incumbents of the positions used their own privately owned automobiles in the performance of their duties in fact, and we challenge the carrier to deny this statement; it was a requirement before assignment to the positions that successful applicant be able to provide his own automobile. In consideration of the fact that employees provided their own automobile, the carrier replaced the tires as needed, also supplied oil and gasoline.

CONCLUSION

The carrier asserts that it has established that the claim in this docket is without basis or merit and therefore respectfully submits that it is incumbent upon the Division to deny it.

OPINION OF BOARD: The contradictions in respect to depreciation found in the statements in this case are apparent. The parties, however, are in agreement that the Carrier provided and the claimant accepted a replacement of the tires upon four occasions during the period involved when the tires were used up. The fact thus established is evidence that the item of tires, along with that of oil and gas, was not considered to be an item of depreciation for which there otherwise was arrangement by understanding and agreement.

The further fact of record is that upon assumption of the position on December 21, 1937, the claimant provided his automobile equipped with five new tires, and that following the replacements thereof by the Carrier on four occasions during the succeeding 5 years of the claimant's service in that position the tires were again used up on October 22, 1942. Thereafter the automobile used until this position was abolished, January 4, 1943, was that which was provided by the Carrier.

These facts disclose admission by the parties, and thus agreement, that the expense for replacement of tires during the period involved was not included as depreciation in the agreed-upon rate of pay. The claimant, therefore, was entitled on October 22, 1942, to have his automobile supplied with five new tires, the equivalent of that which the record shows he had thereon upon beginning the use of it in connection with his duties December 21, 1937.

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 this claimant was entitled on October 22, 1942, to have his automobile supplied with five new tires, the equivalent of that which the record shows he had thereon upon beginning the use of it in connection with his duties December 21, 1937.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1944.