

Award No. 3004

Docket No. CL-2909

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (a) The Carrier violated the rules of the Clerks' Agreement when, on February 15, 1943, at Sparks, Nevada, it failed to call and use employees coming within the scope of the Clerks' Agreement to transfer a bad order carload of express and baggage.

(b) Carrier be required to compensate each, L. A. Burke, T. H. Lague, J. B. Lague, and H. W. Proctor, Clerks, Sparks, Nevada, for 4 hours and 30 minutes at the rate of their position, on time and one-half basis, under the provisions of Rule 21 of our current agreement.

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 dispute are covered by the agreement.

On February 15, 1943, there arrived at Sparks, Nevada, CNW Car 9300, containing baggage and express. Inspection developed the car to be "bad order," making necessary a transfer of the contents to Car SP 6402, the transfer being accomplished by the Agent at Sparks, one clerical employee on overtime basis, and four sectionmen who were called to assist in making the transfer, which was performed between the hours of 5:00 P. M. and 9:30 P. M., February 15, 1943. Neither the Agent at Sparks nor the sectionmen, come within the scope of our agreement with the Carrier; the Agent is covered by the Telegraphers' Agreement and the sectionmen by Maintenance of Way employees' agreement. The clerical employee who was used in addition to the Agent and sectionmen is covered by the Clerks' Agreement. There were available for service during the period the Agent and Sectionmen were used to transfer the baggage and express, employees listed in Item (b) of our Statement of Claim, and coming within the scope of Clerks' Agreement, who could have been called and used to perform the transfer work.

POSITION OF EMPLOYEES: Rules 1 and 21 of our current agreement are quoted below:

"Rule 1.

These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

- (1) Clerks—
 - (a) Clerical Workers
 - (b) Machine Operators

formed by such laborers. In the instant case the carrier had no intention of depriving the claimants of work to which they were entitled; however, the claimants had completed their tours of duty and had left the property at the time the transfer was commenced. The carrier had no way of knowing that they were available for this work or that they had any desire to perform it. While on the other hand the section gang was immediately available; said gang was on duty and in the vicinity. It was the carrier's obligation to transfer the mail, baggage and express from car C&NW-9300 to car SP-6402 as expeditiously as possible and forward the same on the first available train; this the carrier did.

The Division's attention is directed to the fact that the claimants had completed their tour of duty and were not deprived of any work that was secured to them by the current agreement.

The claim for compensation in this docket is based on Rule 21 of the current agreement (see paragraph (b) of the statement of claim). Rule 21 is as follows:

"(a) Except as provided in Section (b) of this rule, employees notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one half will be allowed on the minute basis.

(b) Employees who have completed their regular tour of duty and have been released, required to return for further service, may, if the conditions justify, be compensated as if on continuous duty."

The claimants were not "notified or called" to perform the transfer work on February 15, 1943; furthermore, the carrier has conclusively established that said claimants were not entitled to be notified or called to perform said work; therefore, Rule 21 of the current agreement is in no way applicable to the instant case and does not in any way support the claim in this docket.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely without basis or merit and, therefore, respectfully submits that it should be denied.

OPINION OF BOARD: On February 15, 1943, at about 5:00 P. M., a car loaded with baggage and express arrived at Sparks, Nevada, in "bad order." It was necessary to transfer the contents thereof to a "good order" passenger car. The work was performed by one Clerk covered by the Agreement in evidence, an agent and four sectionmen. The agent and sectionmen were not covered by the Clerks' Agreement. It is the contention of the Organization that employees covered by the Clerks' Agreement should have been called to perform the work. Claimants are employees covered by the Clerks Agreement who were available at the time the work was performed. The claim involves the same principles as those contained in Docket CL-2907, Award No. 3003. It seems to us that every issue in this case is determined by the award in that case and for the reasons therein stated the claim should be denied.

This decision is based solely on the facts existing at the time the claim originated.

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 parties waived oral hearing thereon;

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 no basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1945.