Award No. 12303
Docket No. CL-12184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

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

NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4860) that:

(a) Carrier violated and continues to violate the Rules of the Clerk's Agreement at Santa Rosa, California, when on March 10, 1959, it abolished Foreman Position No. 25, and Clerk-Warehouseman Positions Nos. 21, 26 and 29, and concurrently therewith required and/or permitted employes of the Pacific Motor Trucking Company, not covered by the Agreement, to perform the duties attached thereto, namely, receiving, checking, trucking, sorting, stowing and shipping; and,

(b) Carrier shall be required to compensate the incumbents of Positions 25, 21, 26 and 29, Mr. B. Lancini, Mr. F. Boodleman, Mr. J. Penoli and Mr. W. S. Arrington, respectively, their substitutes and/or successors, if any, an additional day's pay at the rate of their positions March 10, 1959, and each date thereafter until the work thereof is restored to the Agreement; and,

(c) Carrier violated and continues to violate the Rules of the Clerk's Agreement at San Rafael, California, when on March 10, 1959, it abolished Clerk-Warehouseman Position No. 15 and Foreman Position No. 32, and concurrently therewith required and/or permitted employes of the Pacific Motor Trucking Company, not covered by the Agreement, to perform the duties attached thereto, namely, receiving, checking, trucking, sorting, stowing and shipping; and,

(d) Carrier shall be required to compensate the incumbents of Positions 15 and 32, Mr. Harry Rottman and Mr. T. N. Dell'Era, respectively, their substitutes and/or successors, if any, and others adversely affected, from March 10, 1959, until the work thereof is restored to the Agreement, as follows:—Mr. Harry Rottman $1.32 per day, Mr. T. N. Dell'Era $2.66 per day, Mr. A. O. Brevig $17.17 per day, Mr. George Turrini $1.56 per day, and Martha Mordido $17.42 per day.

erly belonging to the Carrier which is covered by the Scope Rule. It also has the right to perform all work embraced by the Scope Rule done by the Carrier by agreement or arrangement with another Carrier so long as the agreement or arrangement continues. It may not claim any right to the performance of work which was done because of agreement or arrangement with other carriers after discontinuance of the agreement or arrangement, no matter what was the motive or reason for the discontinuance."

Award 5774 (Referee A. Munro):

"We think the point thereby raised is: does the Schedule give to the Petitioner a right to compel Carrier to maintain work it has acquired by contract? We do not think so in that the consideration supporting the Schedule only goes so far as to cover work which Carrier has to offer, certainly that which came to Carrier from a third party may be discontinued by said party."

Award 5246 (Referee R. O. Boyd):

"The work generally recognized as signal work belongs to the employes of the Carrier covered under the Scope Rule of the Petitioners' Agreement. But the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific carrier."

The Board will note that the instant claim is made in behalf of claimants "until the work thereof is restored to the agreement."

The Carrier had no control over the actions of the Trucking Company when it notified the Carrier that it would perform its own work after March 10, 1959. The Carrier could not prevent the Trucking Company from doing its work with its own employes and Carrier is not able to bring this work back so that it would be performed by employes coming under the Clerks' Agreement, regardless of the outcome of this dispute. Therefore, the Petitioner is asking this Board to place the Carrier in an impossible position.

CONCLUSION

Carrier's position is that this Board does not have jurisdiction to decide this case, for the Teamster employes of the Trucking Company who perform its platform work, the work in dispute here, are necessary parties but are not before this Board.

Furthermore, the claim is without merit for the work in dispute is that of a third party employer over which the Carrier has no control, and the Carrier has no right to offer this work to claimants or to anyone else.

It is respectfully submitted this this claim should be denied.

OPINION OF BOARD: The Claimants performed platform work, receiving, checking, trucking, sorting, stowing and shipping at San Rafael and Santa Rosa, California for the Carrier. It appears undisputed in the record that the Carrier had the Claimants and other employes perform the work concerned for a Trucking Company, Pacific Motor Trucking Company. The shipments

involved the transfer of LCL shipments from local pick-up trucks to its line haul trucks at the above two transfer points. On March 10, 1959 the Trucking Company notified the Carrier that it would perform the above work with its own employes. Thus the Carrier no longer having control of the work involved, dispensed with the services of the Claimants.

It was the Carrier's contention that this work was a truck-to-truck movement and the decision of the Trucking Company to perform this work rather than have it performed by the Carrier, was a decision of the Trucking Company which the Carrier had no control over. The Organization contended that the work was provided for in the Clerks' Agreement and could not be given to the Trucking Company for its employes to perform.

We are of the opinion that the record and evidence presented shows that only Trucking Company shipments are handled by its employes. It is also noted that all shipments of Carrier at the transfer points involved are loaded into or removed from rail cars by employes of the Carrier.

We are further of the opinion that the Carrier had no control over the work withdrawn by the Trucking Company when it notified the Carrier that it would perform its own platform work, with its own employes, after March 10, 1959.

Thus the Agreement was not violated. See Award 12179 of this Division.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1964.