

Award No. 12802

Docket No. CL-12088

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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) Carrier violated the Clerks' Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily and without negotiation discontinued its Los Angeles General Stores and Sacramento General Stores supply car operations effective December 6, 1957, and December 15, 1957, respectively, and assigned the work thereof formerly performed by employees covered by the Agreement to employees of other crafts not covered thereby; and,

(b) Carrier shall now be required to compensate Sacramento General Stores employees Cecil Ballew, Guy Pasquetti, John P. Rhoads, Paul Hockabout, Ralph Berry and Howard Harter, for all wage loss suffered from December 15, 1957, until the work of the Sacramento General Stores supply car operation is restored and they are placed on their respective positions; and in behalf of all other Sacramento General Stores employees for all wage loss suffered pursuant to being adversely affected by reason of displacements resulting from exercise of seniority rights by the above-named employees; and,

(c) Carrier shall now be required to compensate Los Angeles General Stores employees Joseph H. Ledden, J. W. Starkey, C. E. Tuthill, T. H. Rud and George Brittner, for all wage loss suffered from December 6, 1957, until the work of the Los Angeles General Stores supply car operation is restored and they are placed on their respective positions; and in behalf of all other Los Angeles General Stores employees for all wage loss suffered pursuant to being adversely affected by reason of displacements resulting from exercise of seniority rights by the above-named employees.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions,

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support, and carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were employed in various classifications as Storekeepers and Crane Engineer on Supply Cars. Their duties are fully set out in the record. Among other things, they delivered materials and supplies to Carrier's Roadmasters, Signal Maintainers, Section Foremen, Agents, General Yardmasters, Roundhouse Foremen, Central Train Control Foremen, Bridge and Building Gangs, Welding Gangs, Powder Gangs, Signal Gangs, Megger Gangs, Water Service Gangs, Linemen, Telegraphers, Grinder Operators, Equipment Operators, Yard Offices and Railway Clubs. As of the close of shifts on December 15, 1957, Claimants' positions were abolished.

After December 15, 1957, Carrier increased the number of direct set-out and peddler cars which delivered supplies to Roadmasters.

The issue is whether the work formerly performed by Claimants is now being done by employees not covered by the Clerks' Agreement.

In a Memorandum dated February 11, 1958, Carrier advised their Store Foremen and Section Stockmen, in part, as follows:

"In view of discontinuing Supply Car we recently set up and put into practice scheduled set-out cars to be forwarded to Roadmasters for various districts, for shipment of materials to MofW Department, Agents, Signal Maintainers, etc."

In another Memorandum, dated January 7, 1958, the Assistant General Storekeeper wrote that copies of supply requisitions "will be used by Roadmasters for unloading car and distributing material to proper parties." Similar Memorandums, dated January 8 and February 7, 1958, state that Roadmasters will distribute material to proper parties. Copies of these communications are in the record.

Also in the record is an investigative report of Supply Car SPMW-5348. This work train carried a crane and tank car formerly carried by in Supply Cars on which employees worked. The crane picked up scrap along the way. Several trucks were noted as being loaded from the Roadmaster's office and supplies delivered to various destinations. All material and supplies were distributed by section gangs.

In a conference on March 19, 1959, Petitioner's General Chairman stated that Roadmasters' employees were performing work which Claimants had done. Carrier's representative replied that while Roadmasters may have done this work, the practice has stopped and consignees were obligated to unload material assigned to them. This statement is not denied by Carrier. There is no evidence that the practice stopped.

We cannot agree with Carrier that when supply train operations were discontinued that the work previously performed by Claimants disappeared. The record does not support this contention.

While Carrier may abolish a position, it may not transfer the work of employees in the abolished position to other employees not covered by the Agreement unless by history, custom and practice the latter employees also performed precisely the same work.

The record does not show that Maintenance of Way employees or any other employees not covered by the Clerks' Agreement ever unloaded or delivered materials and supplies to signalmen or other crafts. The work of unloading and delivering materials directly to the various crafts is work which has historically and customarily been performed by Claimants. No other employees performed precisely the same work.

Since Carrier had the right to abolish the positions, we have no right to order that they be reinstated. We do, however, have the right to direct the Carrier to compensate each Claimant for each day from the date his position was abolished, when employees not covered by the Clerks' Agreement delivered and unloaded materials and supplies to stations wherein employees of other crafts were located.

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 Carrier violated the Agreement in accordance with the Opinion.

AWARD

Claims sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12802, DOCKET CL-12088 (Referee Dolnick)

In effect the award denies the entire claim, but on its face, it holds out an illusory promise of reward to the Claimants.

Carrier's clear right to abolish the positions is affirmed and this Board's lack of power to order that the positions be re-established is acknowledged. With these portions of the award, we agree.

The award is in error, however, in ruling that:

"We cannot agree with Carrier that when supply train operations were discontinued that the work previously performed by Claimants disappeared. . . ."

The award is also in error in purporting to:

" . . . direct the Carrier to compensate each Claimant for each day from the date his position was abolished, when employees not covered by the Clerks' Agreement delivered and unloaded materials and supplies to stations wherein employees of other crafts were located."*

Carrier contends that (pages 46 and 47 of the record):

" . . . Claimants operating with their supply train were in charge of and responsible for the distribution of goods in their supply cars from time of departure from headquarters to point where goods were set out from the cars. This is the extent of the work of the supply train positions in question. * * * When the supply train operation was discontinued the work here claimed by the claimants disappeared.

. . . The distribution of supplies at point of delivery is the same procedure as followed prior to the discontinuance of the supply car operation."

We respectfully submit that the employees have failed to disprove these allegations of Carrier. Assuming that these Carrier allegations are true, Claimants are obviously entitled to nothing under the express provisions of the award.

We dissent to that part of the award which purports to find that on undisclosed dates employees other than Clerks have done precisely the same work that was formerly performed exclusively by Clerks on the supply trains.

G. L. Naylor
R. E. Black
R. A. DeRossett
W. F. Euker
W. M. Roberts

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARD 12802 (DOCKET CL-12088)**

The dissent cites some of the numerous "allegations" of the Carrier and then states:

"Assuming that these Carrier allegations are true, Claimants are obviously entitled to nothing under the express provisions of the Award."

*Emphasis ours unless otherwise indicated.

Merely a casual reading of the Award should erase any illusions as to whether or not the Referee assumed such Carrier allegations to be truthful or, at least, persuasive.

Furthermore, with respect to certain illusions of the Dissenters, while the Board has sometimes "recognized" or expressed the opinion that it could not order the restoration of positions, it has always exercised the right to order that work wrongfully removed from a class and craft entitled thereto must be returned to the employes from whence it came; and, as here, that employes whose work was wrongfully removed from them are entitled, not to a "reward", but to damages equal to the extent of the work which was removed.

That, in effect, is what the Referee here held, and, notwithstanding the dissent, there are no illusions apparent from the Award reading:

"Claims sustained in accordance with the Opinion"

which Opinion, not the Dissenters' opinion, holds that:

" * * * We do * * * have the right to direct the Carrier to compensate each Claimant for each day from the date his position was abolished, when employes not covered by the Clerks' Agreement delivered and unloaded materials and supplies to stations wherein employes of other crafts were located."

The Award is correct as rendered. The Dissent does not detract one iota from the soundness thereof.

D. E. Watkins
Labor Member 9/9/64