Award No. 12909
Docket No. CL-12924

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, 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 (GL-5014) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, at 4th and Berry Streets Freight Station, San Francisco, California, when it used Pacific Motor Trucking Company employes, not covered by the Agreement, to block and brace rail freight on flat cars at a time when employes covered thereby were available; and

(2) Carrier shall now be required to allow Mr. P. J. Daly, Assistant General Foreman, Mr. W. T. Burns, Crane Operator, and Mr. J. Doran, Crane Operator, eight hours' additional compensation each at the time and one-half rate of their respective positions August 17, 1960, account not permitted to perform work required thereof.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. Carrier maintains a freight station at 4th and Berry Streets, San Francisco, California, (hereinafter referred to as the Freight Station), where, since the inception of the first Agreement between the parties effective February 1, 1922, employes covered by the Agreement have been exclusively engaged in all of Carrier's work respecting the receiving and shipping of its rail-billed freight.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 17, 1960, Pacific Motor Trucking Company brought several rack truck loads of freight to Platform D, located at 4th and Berry Streets in San Francisco. Ordinarily, the Trucking Company employes haul the freight vans onto flat cars that are specially equipped to hold the vans, disengage same, then block and brace the vans. However, on the occasion above mentioned, the "Sea Vans" loaded with freight were not equipped with wheels, and could not be hauled onto the flat cars in the customary manner. Instead, the freight was loaded onto the flat cars by Carrier employes by the use of an overhead crane belonging to Carrier. After such loading, the Trucking Company employes blocked and braced the loaded freight. Claimants contend that they should have been allowed to do the blocking and bracing and claim compensation for the time which they would have worked in so doing.

The Claimants do not deny that all "piggy back" shipments are traditionally blocked and braced by the Trucking Company employes. Further, they admit that possession and responsibility is not considered to be in the Carrier until after such blocking and bracing is done by the Trucking Company employes. However, it is their contention that since the Carrier crane and Carrier employes were utilized in loading the flat cars, then the blocking and bracing also belonged to Carrier employes. Claimants cite Awards No. 8496 and 8497 in support of their contention. These awards state that where the Carrier was called upon to move freight to the freight car, there its securing, tying, bracing, etc., being incidental to that operation, all in order to place the freight in final form for shipping, was the work of the Claimant.

The Carrier contends, on the other hand, that the shipment involved is governed by the practice relating to carload or piggy-back shipments. It is undenied that responsibility does not pass to the Carrier until after the blocking and bracing is done by the shipper or Trucking Company employes. Carrier contends that in the present case, Carrier did not have any responsibility until after the blocking and bracing and that this distinguishes the fact situation from the facts involved in Awards 8496 and 8497 where Carrier consistently in all cases assumed responsibility of piggy-back shipments before blocking and bracing.

Carrier asserts that this was a carload shipment. It supports the assertion by the fact that the rate charged by the Carrier was the rate charged for carload shipments and as such is classified by the Interstate Commerce Commission. Further, the Carrier points out that Claimants have never denied that this was a carload shipment. Since it is further agreed that blocking and

bracing of carload shipments traditionally is performed by the shipper, we hold that the Claimants had no demand right to perform such blocking and bracing. The fact that Carrier employes did work which was the responsibility of the Trucking Company does not give them a greater right to do the blocking and bracing which was the responsibility of the Trucking Company. (See Award 12451 – Sempliner.)

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1964.