

Award No. 14156
Docket No. CL-15366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 (GL5681) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Klamath Falls, Oregon, when on June 18, 1961, it required and/or permitted an employee not covered thereby to break car seals and open and close car doors, which work has always been regularly assigned to and exclusively performed by employees covered by the Agreement at the location here involved; and,

(b) The Southern Pacific Company shall not be required to allow Mr. H. H. Hobbs eight hours' compensation at the pro rata rate of Yard Clerk for June 18, 1961.

EMPLOYEES' 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 employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On June 18, 1961, XE-6206 Banana Special arrived in Klamath Falls. The Banana Messenger requested permission to inspect the banana cars. A yard clerk and a carman were assigned to assist him. The carman broke the seals and opened and closed all doors on one side of the cars. The yard clerk took a record of the seals on all car doors and took the temperature of each car.

Unassigned clerk H. H. Hobbs, hereinafter referred to as the Claimant, filed claim for eight hours' compensation at yard clerk's rate because a carman, not covered by the Agreement, was used to break seals and open and close car doors.

By letter dated July 25, 1961, Superintendent S. B. Burton had this to say:

"Chief Clerk was instructed to furnish yard clerk to break seals, open doors and re-seal cars after inspection had been made. Car De-

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and if not dismissed for reasons set forth hereinabove, Carrier asks that it be denied. (Exhibits not reproduced.)

OPINION OF BOARD: It is contended by Claimant that at Klamath Falls, Oregon, on June 18, 1961, Carrier required an employe, namely a Carman, not covered by the Clerks' Agreement to break car seals and open and close car doors on a banana special which work had been regularly assigned and exclusively performed by employes covered by the Agreement.

It is the contention of the Carrier that the work the Carman performed was work which had been regularly assigned to Carman under the Carman's Agreement and was not work exclusively reserved to employes under the Clerks' Agreement.

There is an unreconciled difference in facts as to just what work was assigned to and performed by the Yard Clerk and what work was assigned to and performed by the Carman in this case. As between the parties, this Board cannot resolve the credibility of the evidence offered; consequently the record does not furnish any basis for determining the conflict of fact. See Award 9486 (Rose); Award 11786 (Dorsey); Award 12011 (Christian); Awards 12360 and 12560 (Dorsey).

The Claim will be dismissed.

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 Claim shall be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.