

Award No. 14366
Docket No. CL-12743

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, 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-4943) that:

(a) Carrier violated and continues to violate the Agreement between the parties effective October 1, 1940, as amended, when it removed the physical handling of its LCL rail-billed freight from the scope and operation thereof at the Los Angeles Freight Station and assigned it to Pacific Motor Trucking Company employees, which employees do not have seniority rights thereunder; and,

(b) Carrier shall be required to restore said work to the scope and operation of the Agreement and compensate the following employees, and their successors, if any, and all other employees who may be adversely affected, eight hours' compensation each at the pro rata rate of their respective positions December 13, 1957, and each date thereafter until the work is restored to the scope and operation of the Agreement. Employees adversely affected to be determined by a joint check of Carrier records.

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| J. R. Hinson, Trkr. | F. J. Kennedy, Chk. Clk. |
| S. D. Arroyo, Stev-CBO | J. B. Bragg, Stev-CBO |
| J. Ramirez, Stevedore | Z. T. Turner, Stev-CBO |
| J. N. Silva, Stevedore | E. G. Sledge, Stevedore |
| B. Scheller, Stev-CBO | M. Bernheim, Stev-CBO |
| J. A. Duran, Stevedore | J. Acosta, Stev-CBO |
| T. A. Fuson, Stevedore | J. M. Palma, Check Clk. |
| E. McGowan, Stevedore | E. G. Jaquez, Stevedore |

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| D. N. McNeely, Chk. Clk. | R. R. Ruiz, Check Clk. |
| B. Sanchez, Chk. Clk. | W. L. Jackson, Check Clk. |
| M. J. Rios, Chk. Clk. | J. P. Ross, Stevedore |
| A. G. Martinez, Jr. Steve. | F. Neva, Stevedore |
| T. V. Espinosa, Steve. | P. C. Vera, Stevedore |
| G. Monoz, Trkr. | K. K. Katona, Stevedore |
| R. Grief, Stev-CBO | L. G. Campbell, Steve. |
| W. L. Owens, Stev-CBO | W. J. Rogers, Steve. |
| A. L. Mason, Stev-CBO | P. R. Monteith, Extra |
| J. D. Williams, Steve. | R. G. Ferrell, Extra |
| I. L. Flakes, Janitor | S. L. Eriksen, R&D Clk. |
| M. Armstrong, Chk. Clk. | B. F. Adamson, Transfer Clk. |
| R. McClanahan, Extra | J. R. Palma, Extra |
| F. Catania, Steve-CBO | A. M. Giorsetti, Stevedore |
| R. C. Duarte, Steve-CBO | J. M. Newton, Extra |
| H. Malone, Steve-CBO | P. D. Robinson, Extra |
| G. E. Ford, Stevedore | |

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.

1. Carrier maintains a freight station at 1281 North Spring Street, Los Angeles, California (hereinafter referred to as the Spring Street Freight Station) where employees covered by the Agreement are assigned to perform all of the duties in connection with the handling of its freight shipments, and had done so without interruption since the inception of the first Agreement between the parties effective February 1, 1922, until the occasion arose which gave rise to this dispute.

2. The Pacific Motor Trucking Company (hereinafter referred to as the Trucking Company) incorporated under the laws of the State of California to conduct and carry on the business of transporting freight, is a wholly owned subsidiary of the Carrier operating in various states, including California and Arizona, and, insofar as is here material, such operation consists of the pickup and delivery of LCL (less car load) commodities.

3. The Trucking Company picked up certain LCL rail billed freight in Los Angeles and surrounding areas and brought it to the Spring Street Freight Station. There employees covered by the Agreement received it at tailgate, checked it, and thereafter performed all freight handling work in connection therewith prior to loading it into freight cars for shipment to final destinations.

5. While Carrier does not know what Petitioner's contentions will be in its initial submission to this Division, from its correspondence in connection with this case addressed to Carrier in handling on the property, the impression could readily be gained that Carrier's Freight Station employees were deprived of all work in connection with the handling of LCL rail-billed shipments at the Los Angeles Freight Station as a result of the handling described hereinabove. This, of course, is far from the actual facts, as the same volume of traffic arriving or departing in box cars was handled over the platform, and the only question involved was the degree of segregation of traffic to PMT in any event. Further, while it is true that traffic of this kind has decreased over the years, and the decrease has been substantial, this is because of progressive loss of LCL business from the railroad, and this is a well-known problem which exists on a national basis, and is not limited in any respect to this Carrier or its Los Angeles Freight Station.

6. By letter dated May 13, 1957, Petitioner's Division Chairman addressed letter of protest account above handling to Carrier's Division Superintendent, requesting that "... immediate conference be set to discuss this very important matter ...". Requested conference was promptly held and Superintendent's letter, dated May 15, 1957, confirming said conference wherein the latter declined to change procedures in effect is attached as Carrier's Exhibit B.

By letter dated February 10, 1958, nearly nine months later, Division Chairman presented to Carrier's Division Superintendent on behalf of Claimants named in the above-quoted Statement of Claim "... and/or their successors, or any other adversely affected employees ..." who have allegedly been or will be affected in the future, to be determined by a joint check of Company records showing amounts of tonnage of freight removed and the alleged loss of work to each individual concerned,

"... for eight (8) hours' compensation at the applicable rate of pay of their positions for each work day Monday through Friday retroactive sixty (60) days from date of receipt of this letter, and continuing each work day thereafter (Monday through Friday) until the Carrier restores the work removed from the scope of the clerical agreement, now being performed by employees covered by another agreement, ..."

account handling described hereinabove. By letter dated March 31, 1958, Division Superintendent denied the claim.

By letter dated April 1, 1958, Division Chairman advised that decision was not acceptable, and that he was appealing therefrom.

By letter dated May 14, 1958, Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated September 30, 1960 (Carrier's Exhibit G), the latter denied the claim, pointing out that the operation complained of was a Pacific Motor Trucking Company operation, and not a railroad operation, nor did it involve or contravene any provision of the current agreement.

OPINION OF BOARD: At the outset, we must observe that the only claim properly before us, in the light of the Board's rules, covers three alleged diversions, beginning May 6, 1957 and "progressively continued."

On that date, Organization charges, the Carrier continued:

- "(1) To divert rail-billed freight from its facility at 1281 North Spring Street to the Pacific Motor Trucking (PMC) dock located at 24th Street Sub-Agency, Los Angeles Freight Station, the freight that was diverted being rail-billed freight inbound from localities outside Los Angeles, transported by truck, working these commodities across the 24th Street dock and then loading them into intercity and line-haul deliveries.
- (2) They also diverted rail-billed freight picked up by PMT vans in the Los Angeles Basin, including suburban areas, causing this rail-billed freight to be transported to the 24th Street dock, and placed in vans for city distribution, as well as line-haul deliveries.
- (3) They also inaugurated a piggy back van that is loaded daily at 24th Street dock with rail-billed freight picked up in Los Angeles and adjacent areas, and after sorting and loading, this piggy back van is then transported to the northwest territory of Oregon and Washington by rail piggy back."

"This deliberate and arbitrary action of the Carrier", Organization contends, "caused work that is under the scope of the Clerical Agreement, and rightfully belongs to employees under this scope to perform, to be removed therefrom and caused it to be performed by employees of another craft and class at the 24th Street Sub-Agency."

A similar type of claim involving the St. Louis-San Francisco Railway Company and the Railway Clerks' Organization came before Special Board of Adjustment No. 194, and a denial award (Award No. 17) was issued.

A similar claim involving these parties came before this Division in Docket CL-12689, with William H. Coburn as referee.

In sustaining that claim, referee ruled that Award No. 17 of SBA No. 194 had denied the claim before it:

"... because the LCL shipments were moved by motor truck and not by rail (although rail-billed) they were in the uninterrupted custody of the trucking company from the point of receipt to the point of delivery to the consignee; that, therefore, there was no 'farming out' of the intermediate handling and checking."

Here we have the reverse situation: The LCL shipments were in the uninterrupted custody of the trucking company from the point of receipt to the point of delivery to the consignee.

As Carrier points out in its statement of facts, the only changes made were that:

"Commencing May 6, 1957 (the base date of this claim) merchandise cars carrying LCL freight formerly spotted at the east side

of Shed A were changed to spot at the east side of Shed B at the Los Angeles Freight Station. Large lots constituting a truck load, or combination, of rail shipments which would constitute a truck load with not more than four stops for deliveries were unloaded by Carrier's Freight Station employees and handled by said employees for delivery directly from there. By far the greater volume of freight passing through the Los Angeles Freight Station was so handled."

Carrier further points out that smaller lots of LCL freight in the merchandise cars were loaded by Carrier's Freight Station employees directly into PMT trucks which then proceeded to the PMT dock at 24th Street where the LCL shipments were handled over the PMT dock for loading into PMT trucks with PMT freight to destination.

Thus, it is abundantly clear, on the basis of the facts, and Award 12981, as here construed, that Carrier's action did not violate the agreement.

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 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 29th day of April 1966.