Award No. 15596
Docket No. CL-15984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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-5825) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement when on August 28, 1961, instead of calling an employe covered by that Agreement to perform work of transporting train and engine crews, it required and/or permitted an official of the Company to perform the service; and

(b) The Southern Pacific Company shall now be required to allow employe James E. Inman eight (8) hours' compensation at time and one-half rate of his regular assignment of Engine Crew Dispatcher, rate $20.98 per day, for August 28, 1961.

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

Mr. James E. Inman (hereinafter referred to as the Claimant) was assigned to position of Engine Crew Dispatcher at the roundhouse located in Sparks, Nevada, and had among his assigned duties the work of hauling train and engine crews between Sparks and Fernley, Nevada. This service is also performed by other employes working at the Sparks Roundhouse who are listed on Clerks' Roster No. 1.

On August 28, 1961, a Monday, it was necessary to haul train and engine crew between Sparks and Fernley. Instead of using Claimant who was off duty and available to perform this service, the Carrier required and/or permitted Trainmaster Heffner, an official of the Carrier not subject to working rules or scope of the Clerks' Agreement, to perform this work from 3:35 P. M. to 5:40 P. M.

In absence of Carrier's carryall bus for transporting crews, which bus had not returned from Fernley at 3:35 P. M., date of claim, for handling the second crew, Trainmaster W. Heffner transported the crew to Fernley by driving the Carrier-owned automobile assigned to him for his use.

4. Claimant submitted time card for second period August 1961 claiming eight hours' overtime at the applicable rate of his assignment for August 28, 1961 indicating thereon, as follows:

> "Claim 8 hours time and one half for 8/28/61 account Trainmaster Heffner hauling crews from Sparks to Fernley from 3:35 P. M. to 5:40 P. M. At the time the aforementioned shuttle trips* were made I was available for call."

By letter dated September 1, 1961 (Carrier's Exhibit A), Carrier's Division Superintendent denied the claim.

By letter dated September 12, 1961 (Carrier's Exhibit B), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent at Ogden in behalf of claimant for August 28, 1961. By letter dated September 19, 1961 (Carrier's Exhibit C) Carrier's Division Superintendent denied the claim to which by letter dated October 10, 1961 (Carrier's Exhibit D), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated November 16, 1961 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated May 23, 1963 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. On August 28, 1961, a Trainmaster transported a train crew between Sparks and Fernley, Nevada. Claimant, an Engine Crew Dispatcher, was on his rest day, and, according to Petitioner, should have been called and used to transport the crew to its train.

Since 1959, Carrier has operated a carryall bus to transport crews, which has generally been driven by clerical employes when on duty as part of their regular duties. On the Claim date, another clerical employe, assigned to relieve Claimant, was driving the carryall bus. The Trainmaster made the disputed trip in an automobile because the carryall bus was already in use on another assignment. Petitioner contends that Claimant was exclusively entitled to perform the service and should have been called by Carrier for that purpose.

The fundamental issue before us is whether employes assigned as Engine Crew Dispatchers, at Carrier's roundhouse in Sparks, Nevada, had an exclusive right to perform the work of transporting train and engine crews between Sparks and Fernley, Nevada.

(*Claimant had submitted claim for two other dates which are not handled in this dispute.)

The Scope Rule of the Agreement between the parties does not purport to describe the work encompassed but merely lists the classifications covered. Under such a general Scope Rule, Petitioner has the burden of establishing through probative evidence that the work of transporting train and engine crews was exclusively reserved to the clerks by reason of tradition, custom and historical practice.

Petitioner contends that our earlier Award 10326 establishes the principle that the work of transporting crews belongs exclusively to clerks except when a clerk is not available or during an emergency. Carrier avers that Award 10326 established no such principle as a general rule and was confined to the Carrier's Los Angeles Terminal because of local practice supported by local agreement at that location. An examination of said Award discloses that it was decided upon the basis of a local practice of exclusive performance which is not present in the instant dispute.

Here, we are confronted with a concession by Petitioner that officials of Carrier occasionally have transported train crews even though no emergency situation existed. Furthermore, Petitioner avers that it is sufficient to show that such work is customarily, ordinarily and regularly performed by clerks in order to sustain the instant claim.

Examination of the record reveals that the disputed work has been performed by others as well as clerks, and Petitioner's evidence shows only that the work of transporting train and engine crews between Sparks and Fernley, Nevada, has been regularly assigned and performed by Clerks. Therefore, it is apparent that Petitioner has failed to establish the exclusiveness of such assignments, a necessary element without which the Claim cannot be sustained.

In conclusion, it should be noted that Claimant was observing his rest day on the claim date and that another employe, assigned to relieve him, was on duty but otherwise engaged when the disputed work was performed by a Trainmaster. Under these particular circumstances, the transporting of the crew by the Trainmaster did not violate any rule of the Agreement. Awards 10095, 13195 and 15458. Accordingly, the Claim must be denied.

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 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 26th day of May 1967.

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