



Award No. 15604
Docket No. CL-15400

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

PACIFIC CAR DEMURRAGE BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5692) that:

(a) The Pacific Car Demurrage Bureau violated the Agreement between the parties at Los Angeles, California, when it failed and refused to reclassify four (4) Demurrage Clerk positions to Head Demurrage Clerk; and,

(b) The Pacific Car Demurrage Bureau shall now be required to allow Miss Esther Joseph and Messrs. O. R. Bodle, C. W. Westerman and L. J. Fleck, their substitutes and/or successors, the difference in pay rate between Demurrage Clerk and Head Demurrage Clerk beginning sixty (60) days from date claim received and continuing until claim is allowed; and,

(c) The Pacific Car Demurrage Bureau violated the Agreement between the parties at Los Angeles, California, when it failed and refused to adjust demurrage clerk rates at Los Angeles to rates in effect at Phoenix, Arizona; and,

(d) The Pacific Car Demurrage Bureau shall now be required to allow the following employees, their substitutes and/or successors,

James Sinclair
A. H. Nolan
B. E. Armstrong
R. H. Barry
R. S. Zane
T. H. Santo
Floyd King
R. D. Milby

D. R. Rounds
A. F. Farrandina
H. R. Powell
K. E. Waterman
H. M. Cornett
Meredith Lane
A. J. Bernard

the difference in demurrage clerk rates in effect at Los Angeles and Phoenix beginning sixty (60) days from date claim received and continuing until claim is allowed.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date November 14, 1940, including revisions (hereinafter referred to as the Agreement), between the Pacific Car Demurrage Bureau (hereinafter referred to as the Bureau), and its employes 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.

Prior to June 13, 1958, the Bureau maintained a District office at Los Angeles from which the demurrage work performed by Bureau employes at the Pacific Electric Railway, Union Pacific, Atchison, Topeka and Santa Fe, Los Angeles Junction, and Southern Pacific Company, was supervised.

The District office was discontinued effective June 13, 1958. Thereafter, Demurrage Clerks Bodle, Westerman, Joseph and Fleck were required to supervise clerks formerly supervised by District Manager Sherwood and Travelling Supervisor Scott, from the District Office.

Attesting thereto is letter by Local Chairman Cornett, attached hereto and identified as Employees' Exhibit A.

By letter dated May 15, 1962, Local Chairman Homer Cornett filed claim with Bureau's Assistant Manager, Mr. R. C. Baker, attached herewith and identified as Employees' Exhibit B.

Mr. Baker denied the claim on June 29, 1962, his reason therefor being:

"With respect to the merits of this case and your request for change in title classifications and adjustment in rate of pay, and for difference in earnings in behalf of claimants and positions involved, the work assigned said positions at Los Angeles is consistent with the duties and responsibilities comprehended in the classification of such positions and respective rates of pay allowed. Also, the difference which has existed for many years between titles and rates of pay of Joint Demurrage Clerks at Phoenix and Demurrage Clerks at Los Angeles does not provide any basis for the requested changes at Los Angeles.

Claim is not supported by Rule 4, 5, 6, 7, nor any other provision of the Clerks' Agreement, and is denied."

The claim was then appealed by General Chairman James E. Weaver to Mr. C. J. Crittenden, Manager, and ranking Bureau officer delegated to handle disputes of this nature.

On July 27, 1962, Mr. Crittenden had this to say:

"Your appeal claim was discussed with you and Mr. Coleman in conference on July 26, 1962, and this will confirm that we do not consider this claim as being properly before us. However, as out-

By letter dated May 15, 1962 (Bureau's Exhibit A), a Homer M. Cornett on Brotherhood of Railway Clerks' letterhead representing himself as Petitioner's Division Chairman and the employees' representative, a self appointment not confirmed to the Bureau by Petitioner's General Chairman, submitted on appeal to the Bureau's Assistant Manager a claim on behalf of claimants in paragraph (b) of the above statement of claim for difference in rate of pay between head demurrage clerk and demurrage clerk retroactive 60 days from date of receipt of his letter, contending that the claimants named, paragraph (a) of the above statement of claim, were acting in capacity of head demurrage clerks. Also, in that letter claim was submitted in behalf of claimants named in paragraph (d) of the statement of claim for the difference in rate of pay of positions of demurrage clerk at Los Angeles and that of demurrage clerks at Phoenix, Arizona, Petitioner alleging that the claimants named in paragraph (b) of the statement of claim were entitled to same rate of pay received by demurrage clerks at Phoenix and that the rates of pay at Phoenix should govern rate of pay of all demurrage clerks in accordance with Rule 5 of the current agreement.

With respect to the propriety of Homer Cornett's alleged right to represent the Bureau's employees as Petitioner's Local Chairman at the locations involved, it will be noted the Bureau was unable to secure from Petitioner's General Chairman confirmation of Mr. Cornett's appointment as Local Chairman. This is clearly evident in an exchange of correspondence between the Bureau's Assistant Manager and Petitioner's General Chairman, which is contained in the Bureau's Exhibit B.

By letter dated June 29, 1962 (Bureau's Exhibit C), the Bureau's Assistant Manager denied the claim, without prejudice to the Bureau's position that Homer M. Cornett was not the employees' duly designated representative, advising that the claim had no merit in that rates paid employees at the Bureau's Los Angeles Office were consistent with duties and responsibilities comprehended in the classification of the positions involved for which said rates of pay were established at Los Angeles. Also, the Bureau pointed out that the difference in rates of pay for demurrage clerks at Los Angeles and Phoenix has existed for many years, and there is no basis for the claim presented that said rates at Phoenix be applicable to demurrage clerks at Los Angeles.

By letter dated July 21, 1962 (Bureau's Exhibit D), Petitioner's General Chairman appealed the claim to the Bureau's Manager incorporating the self-appointed Local Chairman's letter therein (see Bureau's Exhibit A), as part of the appeal. By letter dated July 27, 1962 (Bureau's Exhibit E), the Bureau's Manager denied the claim, reiterating what was said by the Assistant Manager in his denial to the so-called Local Chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: Paragraph (a) of the Claim alleges that Carrier violated the Agreement when it failed and refused to reclassify four Demurrage Clerk positions to Head Demurrage Clerk. The upward rate adjustment for the four positions, prayed for in paragraph (b) of the Claim and the prayer for reclassification, is predicated upon an alleged increase in duties. Assuming, arguendo, there was an increase in duties as alleged, we find no Rule in the Agreement that provides for pay adjustments because of increased duties or responsibilities. In Award 9307 we held and now affirm:

" . . . Numerous Awards of this Board have held that we are without authority to reclassify positions or order a change in rate of pay. Such matters are properly the subject for negotiation. . . ."

See, also, Award Nos. 7083, 11574, 12672 and 13931. Cf. Award No. 15058. We will deny paragraphs (a) and (b) of the Claim.

Paragraphs (c) and (d) of the Claim constitute a naked request that we award a wage increase in the absence of a showing that the Agreement has been violated. Such is not within our jurisdiction. We will deny paragraphs (c) and (d) of the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1967.