

Award No. 15824
Docket No. CL-16067

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5882) that:

(a) The Southern Pacific Company violated terms of the Clerks' Agreement when, beginning November 15, 1961, and continuing thereafter, it permitted employes of the Convoy Company, Portland, Oregon, who are in the service of an outside company and not covered within the scope of the Clerks' Agreement, to perform work of making damage inspections and filing reports in connection therewith; and,

(b) The Southern Pacific Company shall be required to assign work of making such damage inspections, whenever required, to the clerical forces who by custom and practice have traditionally performed this service in the past; and,

(c) The Southern Pacific Company shall now be required to allow eight (8) hours' additional compensation at pro rata rate of Receiving and Delivery Clerk to Mr. R. H. Zimmerman and/or his successor or successors in interest, namely, any other employe or employes who may stand in the same status of claimant and thus be likewise adversely affected, from November 15, 1961, and continuing for each date thereafter until violations cease.

EMPLOYEES' 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 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.

By letter dated December 27, 1961, claim was submitted to Superintendent A. W. Kilborn by Division Chairman J. H. Groskopf in behalf of Mr. R. H. Zimmerman (hereinafter referred to as the Claimant) in which the facts were outlined as follows:

tives as described above, deciding instead to accept as correct the damage reports prepared by the shipper's representative.

3. Clerk R. H. Zimmerman (hereinafter referred to as the claimant) was assigned to Position No. 11, Teller, at Portland Freight Station, having acquired such assignment September 13, 1960, and remained thereon until August 29, 1965, at which time the position was abolished account transfer of certain freight accounting work to Eugene, Oregon and claimant followed his work to new position at the latter point.

4. By letter dated December 27, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman presented to Carrier's Division Superintendent claim on behalf of Clerk R. H. Zimmerman and successors for one day's pay at rate of Receiving and Delivery Clerk, November 15, 1961 and subsequent unspecified dates, contending that the current agreement was violated when employees of the Convoy Company made inspection and report of damage to carloads of automobiles which they unloaded and delivered at Portland.

By letters dated February 1 and 8, 1962 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim on the basis that no provision of the current agreement limits Carrier in accepting shippers' reports covering matters of this kind.

By letter dated March 30, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, stating therein that the contentions set forth in the Division Chairman's letter of December 27, 1961, were to be embodied therein and made a part of the appeal.

By letter dated May 16, 1963 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim on the same basis as denied by the Division Superintendent.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim on behalf of Mr. R. H. Zimmerman that beginning November 15, 1961, Carrier permitted a privately owned trucking company, the Convoy Company, to perform the work of making damage inspections to Ford automobiles arriving at Portland and of filing the necessary reports regarding the damage prior to delivery to the consignee.

Brotherhood contends that Carrier violated the Clerks' Agreement because employees of an outside company not covered by the scope performed this work. Furthermore, it maintains that for the past 15 years the work in question has been assigned to employees covered by the Clerks' Agreement and that such work must be continued to be assigned to employees falling within the scope of the Agreement.

Carrier requests that the claim be dismissed on the grounds that it is not the same claim as that handled on the property. It also contends that the claim handled on the property and the instant claim are vague and indefinite as to the dates of occurrence after November 15, 1961, and that there is no basis to determine what claimant was adversely affected. In addition, on the merits of the dispute, Carrier argues it exercised its managerial prerogative to eliminate unnecessary work. With a view to avoiding duplicate inspections and inspection reports, Carrier discontinued damage inspections by railroad representatives and instead decided to rely on the damage report submitted by the shipper's representative, the Convoy Company. In short, it is Carrier's position

that it eliminated a check which it had used in the past to verify damage claims and work in question and it did not as Brotherhood contends assign the work to outside forces.

With respect to the contention of Carrier that a new claim has been presented to this Board and therefore the claim should be dismissed, we find that although there is a slight variation in the wording of the claims, the instant claim is the same claim as that presented on the property. Moreover, we find the claim is not vague and indefinite, for it is possible to ascertain who performed the work as well as when it was performed. The claim, therefore, is properly before this Board.

The record shows that before the advent of the Multi-Level open cars, automobiles were shipped in closed box cars. Carrier's employees usually inspected the vehicles before they were unloaded. Another inspection was made after the cars were unloaded at the unloading point or at the location of the dealer who received shipment. With the use of the Multi-Level open cars to transport automobiles, Carrier discontinued its "in car" inspections and related report work that was done when the closed box cars were used. This work was not assigned to other employees of Carrier nor was it performed by independent contractors. The Convoy Company employees continued to perform the inspection for damage after the unloading just as it had done prior to the use of the new Multi-Level cars. Carrier eliminated its own inspection of automobile damage and accepted the reports of damage made by the Convoy Company. This new procedure, after November 15, 1961, did not involve the transfer of the work in dispute to Convoy Company employees but constituted an elimination of the inspection and reporting done by the clerks. Here Carrier exercised its right to assume liability without inspection of freight damage made by its own employees.

For the above reasons we hold that the Agreement was not violated and the claim, therefore, is 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 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 22nd day of September 1967.

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