Award No. 15845
Docket No. CL-16089

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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-5894) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Portland Freight Station on February 21, 1962 when it required and/or permitted employes of the Pacific Motor Trucking Company, not covered thereby, to accept Southern Pacific Company routed freight delivered by the Shipper to the Southern Pacific Company's warehouse; and,

(b) The Southern Pacific Company shall now be require to allow Mr. Robert E. Berry, his successors in interest and adversely affected employes, if any, one day's additional compensation at the pro rata rate of Receiving and Delivery Clerk February 21, 1962 and each date thereafter that a similar violation occurs.

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.

At the time this dispute arose Mr. Robert E. Berry, hereinafter referred to as the Claimant, was the regularly assigned incumbent of Position No. 14, Teller, hours 7:00 A. M. to 3:30 P. M., rest days Saturday and Sunday, at Carrier's Portland Freight Station.

On Wednesday, February 21, 1962, Carrier required and/or permitted employes of the Pacific Motor Trucking Company, not covered by the Agreement, to receive LCL rail-billed freight at its warehouse. The freight was shipped by the Columbia Steel Castings Company, destined Nogales, Arizona, Carrier's Waybill SP-33962, and was drayed to the freight station by the shipper. See Employes' Exhibits A and B, attached herewith.

3. On February 21, 1962, less than carload (LCL) freight to be handled for rail-billing was delivered to the PMT portion of the unloading dock by the Columbia Steel and Casting Company, Inc. This shipper was not under contract with PMT to make delivery to the station and being an independent shipper, it would have been proper to refer him to Carrier's portion of the dock; however, instead of observing outstanding instructions, the freight was received by PMT employes and placed on the "towveyor" for transfer to the Carrier's side. In so doing PMT employe, J. Schroll, accepted the freight from the shipper by signing the shipping order (Carrier's Exhibt A) which accompanied the freight described thereon and transferred the same by the "towveyor" for further handling by Carrier's employes. Subsequently, that freight moved under Waybill No. 33962 prepared by Carrier's forces.

4. R. E. Berry (hereinafter referred to as the Claimant) was assigned to Position No. 14, Teller, assigned hours 7:30 A. M. to 4:00 P. M. at the Portland Freight Station and worked his assignment on date of claim.

5. By letter dated March 12, 1962 (Carrier's Exhibit B), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent at Portland in behalf of claimant ". . . and/or his successor or successors in interest, namely, any other employe or employes who may stand in the same status as claimant and who may be adversely affected . . ." for one day's pay at the pro rata rate of Receiving and Delivery Clerk for February 21, 1962, in addition to any compensation already received for that date and for subsequent dates, based on the premise ". . . that the receipt of Southern Pacific Company freight at a Southern Pacific Company facility by employes of another company violated the provisions of the Clerks' Agreement." By letter dated May 2, 1962 (Carrier's Exhibit C), Carrier's Division Superintendent denied the claim to which by letter dated May 3, 1962 (Carrier's Exhibit D), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated June 12, 1962 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated May 3, 1965 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 21, 1962, employes of the Pacific Motor Trucking Company accepted an LCL freight shipment at a warehouse located at the Portland Freight Station. The freight was shipped by the Columbia Pacific Casting Company destined for Nogales, Arizona by rail. A Pacific Motor Trucking Company employe signed the shipping order which accompanied the freight and this company's employes removed it from the warehouse floor and placed it on the towveyor, a conveyor belt that extends around the perimeter of the warehouse. When it reached the point of transfer for rail shipment it was handled by employes of the Southern Pacific Company covered by the Clerks' Agreement.

Brotherhood contends that Carrier violated the scope of the Agreement when Pacific Motor Trucking Company employes accepted routed rail freight shipped by Columbia Steel Casting Company to the Southern Pacific Company warehouse. It makes claim on behalf of Clerk Robert E. Berry and/or his successors for one day's pay in addition to the compensation he received at the pro-rata rate for the work performed on February 21, 1962, and each day thereafter that similar violations occurred.

Carrier argues that the claim submitted to this Board is different from that handled on the property. It asserts that the original claim was limited to Claimant Berry and/or his successors, whereas the instant claim also concerns other adversely affected employes. In addition, Carrier states that the claim is vague and indefinite as the dates and identities of claimants subsequent to February 21, 1962.

On the merits Carrier takes the position that under this general type scope rule the work performed is not exclusively reserved to employes subject to the Clerks' Agreement, and in the absence of a system-wide practice in which this work was performed exclusively by clerks, Pacific Trucking Company employes could properly be assigned this work. Moreover, Carrier maintains that the freight was not delivered to the Southern Pacific Company facility as Brotherhood contends, but to the Pacific Motor Trucking Company warehouse, and therefore it could have been handled by employes of that company without violating the Agreement. Carrier also points out that the receipt of this freight by Pacific Motor Trucking employes was not in accordance with its instructions, and furthermore clerical employes then handled the freight for rail transfer. Since the Pacific Motor Trucking Company employes handled the freight just as an intermediate step, since Claimant suffered no monetary loss or hardship, and since there is not specific penalty rule in the Clerks' Agreement, Carrier urges that the claim for additional compensation lacks merits.

The parties are not in agreement as to where the LCL freight was accepted. Carrier states it was received in the Pacific Motor Trucking Company warehouse which is separated from the Southern Pacific Company warehouse by a painted line near the center of the facility. Brotherhood, however, asserts that no such demarcation existed and that employes of both companies were not restricted to any section of the warehouse when receiving shipments for their respective companies.

The record discloses that at the time this dispute arose trucks and vans backed into any space available at the warehouse to unload their shipments. Freight handled through the services of the Pacific Motor Trucking Company or its sub-contract draymen was handled by employes of this company, whereas freight from shippers and draymen not under contract with the Pacific Motor Trucking Company was handled by clerks of the Southern Pacific Company.

In the instant dispute the shipper, the Columbia Steel and Casting Company, was not under contract with Pacific Motor Trucking Company to make deliveries to its warehouse, and under Carrier's waybill No. 33962 shipped the freight destined for Nogales, Arizona via rail to the warehouse of Southern Pacific Company. Under these conditions, this work has been traditionally performed by employes covered by the Clerks' Agreement. Because the work was but an intermediate step in the handling of the freight which was subsequently transferred to employes subject to the Clerks' Agreement Carrier is not relieved of its responsibility to comply with the Agreement. We find that this work belonged to employes subject to the Clerks' Agreement.

Although the language used to identify the Claimants in the claim before this Board is not identical to that submitted on the property, we find the claim is not at variance in designating the Claimants. However, we do

find that other than for February 21, 1962 the claims for dates of alleged violation are unspecified and vague.

In view of the fact that Southern Pacific Company freight was received at a Southern Pacific Company facility by employes of the Pacific Motor Trucking Company not covered by the Clerks' Agreement, we hold that the Agreement was violated. Claim is sustained and compensation is allowed only for date of February 21, 1962.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.

Keenan Printing Co., Chicago, Ill Printed in U.S.A.