



Award No. 16624
Docket No. CL-17221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6292) that:

(a) The Southern Pacific Company violated the current Agreement between the parties when on December 18, 1964, it required employes of the Northwestern Ice & Cold Storage Company, not covered by the Agreement, to deliver and unload ice into Carrier's Ice House; and,

(b) The Southern Pacific Company shall now be required to allow Mr. George Heintz eight (8) hours' additional compensation at rate of Truck Driver December 18, 1964, and each date thereafter that the same violation occurs, subsequent violations to be determined by a joint check of Carrier's records.

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 of this dispute Mr. George Heintz, hereinafter referred to as the Claimant, was the regular assigned incumbent of Position No. 50, Truck Driver, Brooklyn Stores, assigned hours 10:30 A.M. to 7:00 P.M., rest days Saturday and Sunday. He began working for Carrier's Stores Department in 1925 and performed service over the years as Laborer, Stores Deliveryman, Helper, Tractor Driver and Truck Driver.

Deliveries of ice to Carrier's Brooklyn Yard under the foregoing arrangement commenced December 18, 1964, and continued generally on a bi-weekly delivery basis until eventually reduced to one ice delivery a week due to subsequent installation of electric operated water coolers, along with a progressive increase in the use of new rolling stock with self-containing devices for water cooling purposes which reduced the requirements for bulk ice. No change in force whatever resulted from this method of handling and time formerly occupied by Carrier's truck driver picking up ice from the supplier was utilized for other work incidental to Carrier's requirements.

4. George Heintz (hereinafter referred to as the claimant) was assigned to Position No. 50, Truck Driver at Brooklyn Stores Department, assigned hours 10:30 A. M. to 7:00 P. M., rest days Saturday and Sunday. On December 18, 1964 and subsequent dates, claimant performed service on his assignment and was allowed the applicable rate of pay therefor.

5. By letter dated December 31, 1964 (Carrier's Exhibit A), Petitioner's Division Chairman submitted to Carrier's Assistant to General Storekeeper a claim in behalf of claimant for 8 hours additional compensation at pro rata rate of Position No. 50, Truck Driver, for December 18, 1964, and subsequent dates, contending that the current agreement was violated when employes of Northwestern Ice and Cold Storage Company delivered and unloaded ice into Carrier's ice houses at Brooklyn Yard.

By letter dated February 24, 1965 (Carrier's Exhibit B), Carrier's Assistant to General Storekeeper denied the claim on the basis there was no agreement violation inasmuch as Carrier maintains the prerogative of stipulating the f.o.b. point on purchase and delivery of material, to which by letter dated March 4, 1965 (Carrier's Exhibit C), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated April 23, 1965 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Supervisor of Stores and by letter dated June 15, 1965 (Carrier's Exhibit E), the latter denied the claim to which by letter dated August 3, 1965 (Carrier's Exhibit F), Petitioner's General Chairman advised that the claim would be appealed.

By letter dated August 3, 1965 (Carrier's Exhibit G), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated March 7, 1966 (Carrier's Exhibit H), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 18, 1964 Carrier's truck driver assigned to the Stores Department drove from Carrier's property (Brooklyn Yard, Portland, Oregon) to the Northwestern Ice & Cold Storage Company ice dock; picked up the needed ice; and transported and placed it in the ice houses on Carrier's property. On said date, the Ice Company offered to deliver the ice in its own delivery truck on a minimum order of 32-300 lb. cakes of ice per order. The ice company employe would also place the ice in Carrier's ice houses. This latter arrangement was put into effect on December 18, 1964 and has continued since that date.

The Organization contends that although Carrier had the right to have the ice delivered to its ice houses, it had no right to require or permit the ice

company employe to place the ice inside the ice houses; that this work belonged exclusively to the employes because it had historically been performed by the employes at this point on Carrier's property. The Organization concedes that on certain other points on Carrier's property, ice company employes performed this work. The Organization relies on Awards 16476 (Dorsey) and 12390 (Stack) which narrow the exclusivity theory to one certain point on Carrier's property and does not require proof of system wide practice to sustain exclusivity.

Awards 16476 and 12390 are distinguishable from the instant case for the reason that in those awards, the Carrier purchased services. In this case, Carrier purchased goods. There is no proof that Carrier paid any more for the ice to have it delivered to its final destination than it cost when Carrier's employes procured the ice from the ice company property.

Also, this Board finds that the overwhelming weight of authority requires proof of system wide custom, practice and tradition in order to establish exclusivity. See Award 16550 (Dorsey). The citations on this point are too numerous to mention.

This Board will follow Award 16506 (Zack) which states:

"We find nothing in the parties' agreement which limits management in its right to purchase materials, or to specify the place or technique for delivery thereof (14060)" * * *

In view of the foregoing, this claim will 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1968.

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