



Award No. 17198

Docket No. CL-17575

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Morris L. Myers, 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-6407) that:

- (a) The Carrier violated the Agreement at its Portland Freight Station on each date July 10, 14, 21, 26, August 4, 9, 16, 21, 24, 29, 1961, and subsequent dates, when it required and/or permitted individuals not covered thereby to accept rail-billed freight; and,
- (b) The Carrier shall now be required to allow Mr. R. H. Martien, his substitutes and/or successors, eight hours' additional compensation at the rate of Receiving and Delivery Clerk for each of the dates set forth in paragraph (a) above, and for each subsequent date on which the same violation occurs.

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 employees represented by the Brotherhood of Railway, Airline 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.

When this dispute arose Mr. R. H. Martien held position of Overcharge Clerk, Portland Freight Station, hours 8 A.M.-4:30 P.M., rest days Saturday and Sunday.

On July 10, 1961, and other dates specifically enumerated in Statement of Claim, Carrier required and/or permitted employees of the Pacific Motor Trucking Company, who hold no seniority rights to perform work within the scope and operation of the Agreement, to receive rail-billed freight at Carrier's warehouse at a time when claimant and other agreement covered employees were available therefor.

Pursuant to such violations on September 2, 1961, Mr. J. H. Groskopf,

employees for movement to Carrier's employees who then performed the same service as if such shipments had been received by them direct from the shippers.

6. During the period of this claim, R. H. Martien (hereinafter referred to as the claimant) was assigned to Position 64, Overcharge Clerk, with assigned hours 7:00 A.M.-11:00--11:30-3:30 P.M., PST, Monday through Friday, and performed service in his assigned position each date named in the claim.

7. By letter dated September 2, 1961 (Carrier's Exhibit "E"), Petitioner's Division Chairman submitted to Carrier's Division Superintendent claim in behalf of claimant, his substitutes and/or successors, for 8 hours' pro rata rate of Receiving and Delivery Clerk for each date, July 10, 14, 21, 26, August 4, 9, 16, 21, 24 and 29, 1961, and for each subsequent date that:

"... employees of another company are required and/or permitted to perform work rightfully coming under the Scope and Rules of the Clerks' Agreement, and continuing until such work is returned to the employees coming under the Scope and Rules of the current agreement."

By letter dated October 19, 1961 (Carrier's Exhibit "F"), Carrier's Division Superintendent denied the claim.

By letter dated November 29, 1961 (Carrier's Exhibit "G"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel who, following conference on the property, denied same by letter dated May 3, 1965 (Carrier's Exhibit "H").

(Exhibits not reproduced)

OPINION OF BOARD: The issue to be decided in this case is whether the Carrier violated the Agreement, more particularly the Scope Rule thereof, when employees of Pacific Motor Trucking Company (PMT), a wholly-owned subsidiary of the Carrier, received and signed for LCL freight arriving at the Portland, Oregon Freight Station instead of employees of the Carrier represented by the Organization.

This issue involving the same parties and the same location was decided in Award No. 15845, and we believe that the Award in that case should be followed herein. We understand that Award to hold that the receipt of LCL freight can properly be received by PMT employees if the motor carrier carrying the freight to the freight station is either PMT or a sub-contract drayman of PMT. However, if the motor carrier carrying such freight to the freight station is neither PMT nor a PMT sub-contract drayman, it must be received by employees of the Carrier represented by the Organization.

With these principles in mind, we find the following in the Record on the property. (The major dilemma in this case is that both the Organization and the Carrier have attempted to introduce much evidence after the dispute left the property, which, of course, must be ignored). After the claim herein was made, the Carrier first asserted that the motor carriers who carried the freight to the freight station on the dates herein involved were preponderately sub-contract draymen of PMT and that, therefore, the claims were without merit. The Organization responded that it believed that "the receipt

of Southern Pacific Company freight at a Southern Pacific Company facility by employees of another company violated the Scope and operation of the Clerks' Agreement and claim is therefore, valid and proper." The Board is not of the opinion that the Organization in its response denied that the motor carriers involved were predominantly PMT sub-contract draymen. To the contrary, we believe that the reasonable interpretation of the Organization's response was that it made no difference as to the validity of the claim whether or not the motor carriers were PMT sub-contract draymen.

The Carrier then replied to the Organization stating that with exception to the dates of July 19, August 3, 4, 8, 9, 15, 16 and 25, 1961, (July 19, August 3, August 8, August 15, and August 25 are dates which are not mentioned in the claim) the trucking firms involved were under contract to and acting for PMT. That is the extent of the Record on the property as to which motor carriers were and were not PMT sub-contract draymen. As stated earlier, much "evidence" was set forth in the ex parte submissions related to this factual question but such material cannot be considered by the Board.

On the basis of the Record on the property, the Board, following Award No. 15845 on the contractual issue, concludes that the claim for the dates of August 4, August 9 and August 16, 1961 is to be sustained, and that the claim for the other dates is to be denied.

The Board also follows Award No. 15845 as to the remedy for the violation for the dates on which the claim is to be sustained, particularly in the interests of consistency since Award No. 15845 involved the same parties at the same location.

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 violated to the extent consistent with the Opinion.

A W A R D

Claim sustained in part and denied in part consistent with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1969.

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