

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19416
Docket Number TE-17382

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Formerly Transportation-Communication Employees Union)
(
(Southern Pacific Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Pacific Lines), that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on October 6, 1965, and continuing each date thereafter, it required or permitted an employee of the Pacific Fruit Express Company at Brentwood, California, to perform work belonging to the agent-telegrapher at Brentwood.

2. Carrier shall compensate the senior idle extra telegrapher on the Division, or if none available, then the senior, idle regularly assigned telegrapher observing a rest day at the nearest location to Brentwood, California, for eight (8) hours' compensation at the minimum telegraphers' rate of pay on the Western Division beginning October 6, 1965 and continuing until violation ceases.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when on September 21, 1966, and continuing each date thereafter, it required or permitted an employee of the Pacific Fruit Express Company at Brentwood, California, to perform work belonging to the agent-telegrapher at Brentwood.

2. Carrier shall compensate the senior idle extra telegrapher on the Division, or if none available then the following idle regularly assigned telegraphers, or their successors, observing a rest day, for eight (8) hours' pay at the minimum rate beginning September 21, 1966 and continuing until violation ceases: N. E. Boyer each Sunday and Monday, G. W. Buxton each Tuesday and Wednesday, C. S. Pyle each Thursday and Friday, and R. K. Voorhies each Saturday.

OPINION OF BOARD: The Petitioner alleges that Carrier violated the agreement in requiring or permitting an employee of the Pacific Fruit Express Company, at Brentwood, California, to perform work allegedly belonging to the agent-operator at that station during certain periods in 1965 and 1966.

The Carrier states that between September and November of each year there is a seasonal increase in business in the area around Brentwood due to the harvest of perishable produce and that moving this produce requires the use of special refrigerator cars which are owned and furnished by the Pacific Fruit and Express Company; that for the 1965 and 1966 perishable seasons PFE decided to have one of its own employees stationed at Brentwood in order that that Company could furnish full-time service specialized exclusively to PFE functions in connection with the control of and responsibility for the PFE-owned refrigerator cars; that the position was entitled agent-clerk and was covered by the PFE's clerks' agreement.

In the handling of the dispute on the property the Carrier asserted:

".... there is no provision of the TCU Agreement which confers upon or reserves work here in dispute to employees coming within the Scope Rule thereof. Additionally, the handling of Pacific Fruit Express business does not in any manner involve employees represented by your organization except to the extent that business is turned over to them for handling.

"The PFE employee was assigned by the PFE Company to perform exclusive PFE work on a seasonal basis at Brentwood. The items of work which you describe as being performed by said employee were all concerned with the conduct of exclusive PFE business and conformed to the usual duties of other PFE employees situated at several other points on line, both on seasonal or permanent basis."

It is well settled that in proceedings before this Board the burden is upon the Petitioner to prove all essential elements of its claim, and it is also well settled that mere assertions are not proof. The Petitioner has submitted no probative evidence to support its contention that the PFE clerk performed work of the Southern Pacific Company. This Board has held that the scope of an agreement does not extend to work that does not belong to the Carrier, but that it applies only to work that the Carrier has to offer. See Awards 18055, 13056, 9762, 9580 among others.

The Petitioner relies upon the so-called one-man station doctrine, contending that Brentwood is a one-man station and that all work at such locations belongs to the Agent. However, in Award 16954 this Board held:

"This is a typical case involving a Scope Rule which is general in nature, thus placing on Petitioners the burden of proof that the disputed work has been traditionally and exclusively reserved to members of the TCE Union. A review of the record made on the property reveals a welter of charges, counter-charges, assertions and denials. From this maze we are unable to extricate proof of exclusivity sufficient to support the instant claim.

"It is further urged that Robstown, Texas is a one-man station and that in line with the doctrine first enunciated in our Award 602 all work at such a station belongs to the agent. Conceding the validity of such doctrine, there still devolves on Claimants the burden of proof that the disputed work was station work that had been performed exclusively by the agent under past practice. In the instant case Petitioner failed to meet this burden."

In our present docket the Petitioner has failed to prove that the PFE clerk performed work of the Southern Pacific Company, or that the work is reserved exclusively to employees covered by the applicable agreement between the parties. The claim will, therefore, 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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.