

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21006  
Docket Number CL-21044

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7828)  
that:

(a) The Pacific Fruit Express Company violated the Agreement when it required and/or permitted employees of the Southern Pacific Transportation Company, not covered thereby, to inspect and start mechanical refrigerator cars at Indio, California, including the setting and regulating of thermostats, which work has been historically and traditionally performed exclusively by Agreement-covered employees; and

(b) The Pacific Fruit Express Company shall now be required to allow Mr. P. A. Stenrose eight (8) hours' compensation at rate of Agent Clerk E-2, Coachella Valley, \$36.51 per day, beginning May 1, 1971, and continuing each day thereafter while the violation set forth in paragraph (a) continues.

OPINION OF BOARD: This Scope Claim is based on the allegation that the work of inspecting the Carrier's refrigerator cars at Indio, Coachella Valley, California, has historically and exclusively been performed by this Carrier's clerical force, and that when the Carrier established a position of Agent-Clerk at Indio on May 21, 1971, the Carrier, instead of assigning such work to the incumbent thereof, permitted such work to continue to be done by employees of the Southern Pacific Transportation Company.

The Carrier's principal defense is that no Scope violation has occurred because the disputed work did not belong to this Carrier, but instead, was the work of the Southern Pacific Transportation Company.

The record shows without contradiction that, at least since 1969, this Carrier has established a seasonal Agent-Clerk position in Coachella Valley, beginning in May or June and ending in June or July. In 1971 the seasonal agency was established on June 2 and terminated on July 9. During the remainder of the year (i.e., other than the period of the seasonal agency), any of the disputed work required to be performed would be performed by railroad employees of the Southern Pacific Transportation Company. The record also shows without contradiction that this Carrier and the Southern Pacific Transportation Company have been signatories since 1906 to a "Protective Service Contract", under which this

Carrier provides services regarding perishable shipments on the railroad of the Southern Pacific Company.

In these facts the Employees of this Carrier have no agreement right to any work performed by employees of the Southern Pacific Transportation Company. All of the work concerning the handling of perishable shipments on the property of the Southern Pacific Company belongs to such company and it can delegate as much or as little of such work to the herein Carrier as it may decide. In short, since the herein Carrier does not own and control the work, it cannot be faulted because it does not prohibit the owner of the work, the Southern Pacific, from having some of the work performed by its own employees. For a similar holding, see Third Division Award No. 7194. The 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 Employees involved in this dispute are respectfully 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.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.