NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21977
THIRD DIVISION Docket Number CL-21491

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8014, that:

(a) The Pacific Fruit Express Company violated the Clerks' Agreement at Brooklyn, Oregon, when it instructed shippers' employes and/or loaders, not covered thereby, to initially start Mechanical refrigeration units at loading points Brooks, Hubbard and Newberg, Oregon, which work had always been exclusively performed by clerks at Brooklyn, Oregon; and,

(b) The Pacific Fruit Express Company shall now be required to compensate employes R. L. Nees, D. W. Graf, R. D. Ward and J. L. Frank, for 32 hours, 26 hours and 40 minutes, 42 hours and 40 minutes and 26 hours and 40 minutes respectively, at time and one-half rate of their respective positions as specifically set forth in Exhibit A, and similar rest day call compensation for each of the above named claimants for like violations occurring subsequent to July 25, 1973.

OPINION OF BOARD: Claimants, employed at Brooklyn, Oregon, are seeking compensation for various dates starting June 2, 1973, when mechanical refrigerator cars were started by shippers at Brooks, Hubbard and Newberg, Oregon. Claimants allege that Carrier employes working under the Clerks' Agreement at Brooklyn, have exclusively performed the work of starting mechanical refrigerator cars destined for loading at Brooks, Hubbard and Newberg; and when Carrier instructed or permitted shippers to perform this function (consisting of pushing a stop-start button) at the point of loading, this removed work from the scope of their agreement and, more particularly, violated Article I, Paragraph (e) of the Agreement of April 2, 1973 which provides:

> "Outside of established Car Shops, when not in direct connection with repairs, work performed by PFE employes

"on refrigeration units of refrigerator cars, trailers, containers and analogous equipment consisting of starting, refueling, protective service and pre-service inspections, lading and pre-load inspections, controlling temperatures by adjustment of controls while under load, or in preparation to load, as well as preparation of related records, will be performed by employes under the Clerks' Agreement; it is also understood that Clerk employes may perform minor service replacements or adjustments as part of said duties."

Before turning to the merits of the Claim, it is necessary to deal with a time limits defense raised by the Carrier in its submission. The Carrier alleges a procedural defect in that the Organization did not comply with Rule 23 (c) which calls for notification by the Organization to Manager of Personnel in writing that his decision was rejected. In this regard, the first sentence of Paragraph 3 of Rule 23 (c) reads:

"The requirements outlined in paragraphs 1. and 2., pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes...."

Mr. Walsh is the highest officer designated to handle claims and grievances, and appeals from his decision to this Board do not require notice of rejection of his decision in writing. Thus, the claim is properly before the Board.

The Carrier defends against the validity of the Claim on several grounds, arguing that only a trivial amount of disputed work is performed when a shipper pushes a start-stop button in a mechanical refrigerator car, that Carrier clerks at Brooklyn have in the past released such refrigerator cars in an idling configuration which were later started by the shipper, that those, on occasion, that had been started at Brooklyn were shut down by the shipper at Brooks, Hubbard and Newberg for various health, safety and convenience reasons and later restarted, and, finally, that the April 2, 1973 Agreement is a division-of-work agreement between clerks and carmen and, as such, does not give to clerks exclusive rights to start mechanical refrigeration units when this work is performed by the shipper at its facility.

Carrier's trivial or de minimus argument is not a valid basis for violations of the agreement, if, in fact, the agreement reserves the work to clerks. No such reservation was accomplished by the Scope Rule and Carrier's argument with respect to the purpose of Paragraph (e) of the April 2, 1973 Agreement has merit. As we read the language of that agreement, it quite clearly pertains to "work performed by PFE employes" and defines various work jurisdictions between carmen and clerks. When consideration is given to Carrier's contentions as to the practice described supra, we do not find that the Agreement was violated when a shipper pushed a button to start or stop a mechanical refrigeration unit in a car located at its facility. For the foregoing reasons, the claim must 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.