

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22061
Docket Number CL-21878

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8244) that:

(a) The Southern Pacific Transportation Company violated Article V of the February 10, 1971 Agreement when it failed and refused to compensate Mrs. Justina Savela Ortiz, widow of employe Frank Pablos Ortiz, accidentally killed on March 5, 1973, in accordance with the terms thereof; and

(b) The Southern Pacific Transportation Company shall now be required to allow Mrs. Justina Savela Ortiz the sum of \$90,000 plus interest at the rate of 6% compounded annually from sixty (60) days following the death of Mr. Frank Ortiz, March 5, 1973.

OPINION OF BOARD: On March 5, 1973, Employee Ortiz was accidentally killed while driving a Carrier-owned vehicle to pick up a crew (according to the Organization) or to drop off supplies (according to Carrier).

The Carrier and the Organization are parties to a February 10, 1971 agreement which provides benefits when employees die or are seriously injured while "riding in, boarding, or alighting from off-track vehicles authorized by the Carrier" and are "1) deadheading under orders or 2) being transported at carrier expense."

The agreement contains exclusions, as well as coverage conditions.

The Organization's claim for \$90,000.00 (\$100,000.00, minus a \$10,000.00 set-off under a group policy) was denied by Carrier, because its insurance carrier "denied coverage." A letter from the

insurance carrier, which was attached to the denial, stated that coverage would not be provided inasmuch as the employee was:

"...performing the duties of his occupation, namely delivering supplies, rather than deadheading or being transported..."

In response to the Organization's April 21, 1975 appeal, (which cited the then recently issued Award 20693) Carrier replied that the employee was not engaged in activities contemplated by the "Off Track" provisions of the agreement.

We have studied the record before us at length and, of course, we have confined our review to those items properly before us for our consideration.

In its submission to this Board, the Carrier urges that "it was never intended that such an employee who was directed to deliver material and supplies as part of his regularly assigned duties would be covered..." In this regard, Carrier insists that we may not conclude that the employee was "deadheading under orders" or "being transported."

To be sure, Award 20693 was adopted some time after the death which gave rise to this dispute, but nonetheless, we feel that Award 20693 controls this case. Moreover, we do not agree with Carrier that said decision is palpably erroneous.

The Carrier did not contest the demand for interest while the matter was under review on the property. Thus, we will sustain the claim in its entirety.

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;

Award Number 22061
Docket Number CL-21878

Page 3

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.