

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KENTUCKY AND INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Terminal Committee of the Brotherhood that:

(a) Carrier violated the Current Clerk's Agreement particularly Rules 1 and 6, when on September 26, 1946, without conference, negotiation, or agreement, it abolished seven messenger positions and assigned the performance of their duties to Group I clerical employees, to yardmasters, to assistant yardmasters, to telegraphers, and to car department employees, and when it permitted messengers work to be done by porters, employees occupying excepted or official positions, employees of other carriers, and others.

(b) The six Messenger positions together with the necessary relief position be restored, and their work returned to them, including the exclusive operation of the pneumatic tube system.

(c) Messengers Keith F. Nichols, James B. Hughes, James B. Boggess Jr., John E. Keith, Lawrence H. Schoch, Norman C. Evans, Donald L. Applegate, James T. Owings, and James Suel, be paid from September 26th, 1946, at the rate of \$6.27 per day for each day they would have filled one of the seven positions had such positions not been abolished in violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Early last spring the K. & I. Terminal Railroad began installation of a pneumatic tube system connecting five offices on their property.

On numerous occasions the Committee attempted to ascertain the effect, if any, this new system would have on employees covered by our contract. The Committee brought the matter to the attention of Superintendent Mr. R. G. Claiborne, General Freight Agent Mr. J. A. Howison, and Director of Personnel Mr. T. L. Dixon. None of these officials professed to know how the operation of the system would be handled and as late as one week before the tubes were put into operation the Committee could obtain no definite information as to the employees who would operate the system and what jobs if any would be abolished.

The pneumatic tube system was completed and put into operation on September 23d, 1946. On that date General Freight Agent Mr. J. A. Howison issued bulletin No. 167 (Exhibit 1 attached) which had the effect of abolishing two Messenger positions from 7:00 A.M. to 3:00 P.M., two as-

where the work of a given class on an abolished position is distributed to another position it will be assigned to other employees holding positions of the same class when such employees are available and qualified."

relaxed any rigid rule of classification, it did not and was not intended to defeat the very purpose for which the classifications were made; and that there was a violation in assigning the work thusly.

The instant case is not similar to Award 1306. That award indicates that the entire work of a full time stevedore, class 3 position, was assigned to baggagemen, class 1 positions. Now, in the instant case, the work of the seven messengers, Group 2 positions, whose positions were abolished, was not assigned to Group 1 employees. The walk work portion or approximately one half of the tour of each messenger's assignment was eliminated, and that part of messengers work which was not eliminated was assigned to other messengers, employees in the same office within the same seniority district.

Award 1459: The evidence reveals that Trucker A's position, Group 3, was cut off; and that the work he performed 6 to 8 hours a day prior to the date his job was cut off was assigned to Group 1 employees. The Board sustained the Organization's claim that such action was wrongful.

The facts in Awards 1306 and 1459 are substantially similar. That comment made in connection with Award 1306 is, therefore, equally applicable here.

(Exhibits not reproduced.)

OPINION OF BOARD: The Terminal Committee of the Brotherhood claims that the Carrier violated their effective agreement on September 26, 1946, when, without conference, negotiation or agreement, it abolished seven messenger positions and assigned and permitted the performance of their duties to be done by others. It asks that these positions be restored, that it be given the exclusive operation of the pneumatic tube system and that the former incumbents of these positions be paid what they would have received at their regular rate of pay if they had been permitted to fill their positions.

The record establishes that the Carrier installed a pneumatic tube system between its Callers' Office, Bank Street Office, Yard Clerks' Office, Intercommunications Tower and Market Street Yard Office. It placed this tube system in operation on September 23, 1946, and thereafter, on September 26, 1946, abolished the seven messenger positions about which this complaint is made.

Between the five offices thus connected this system primarily did away with what is referred to as "leg-work." There are other offices of the carrier which the tube system does not connect. As to the seven positions here involved this type of work, that is leg-work, consumed slightly over fifty per cent of their working time.

After the tube system was installed, placed in operation and the seven messenger positions abolished, the balance of the duties which they had formerly performed, that is other than "leg-work" between the five offices, was assigned to and performed by others. It was primarily assigned to and performed by clerical employees who are within Group I of the parties' agreement, whereas the messenger employees are in Group II thereof. Part was assigned to and performed by employees who are outside of the agreement. This condition continues to exist.

The record shows that in January of 1947 the Carrier purchased a motor scooter for the use of its messengers, which apparently increased the efficiency of their work.

The Board has in previous awards announced the principles which govern this situation. As to the installation of the pneumatic tube system we said in Award 864:

"The agreement is clearly applicable to certain character of work and not merely to the method of performing it. To hold otherwise would operate to destroy collective bargaining agreements. Improved methods have no more effect upon such agreements than such agreements have upon the right of the carrier to install such methods. Certainly no one would question the right of carriers to make improvements in methods of performing work and we think it is equally true that improved methods do not operate to take the work out from under contracts with employees performing same."

As to the work assigned to clerical employees who, under the agreement, are in Seniority District 1 of Group 1, whereas messenger employees are in District 2 of Group 2, we have often held as stated in Award 1808:

"* * * it is well settled that a carrier in discontinuing a position not only may not assign the work to those outside the scope of the agreement but is not permitted to assign it even to those covered by the agreement if they hold seniority rights exclusively in another district." (See also Awards 385, 973, 2354, 3271, 3506, and 3656.)

As to the work assigned to and performed by employees outside of the agreement we have often said that the carrier may not assign the work to employees outside of the scope of the agreement and not covered thereby. See Awards 180, 1254, 2506, 2553, 3360 and 3371.

And, as to this work being done by numerous employees in small amounts, we have said that the carrier must not be permitted to do piecemeal what it has agreed not to do wholesale. See Award 198.

It is true that the work of the messenger positions was materially reduced by the installation and operation of the pneumatic tube system, but substantial duties of these seven abolished positions remained after its installation and operation. As to these remaining duties that had previously been performed by the occupants of these seven abolished messenger positions the carrier violated its agreement in the manner in which it assigned and had this work performed. Those remaining duties belonged to the messengers and the carrier should have continued sufficient of the messenger positions to have performed them. The carrier is, therefore, directed to return these duties to the messengers and to immediately establish sufficient messenger positions for that purpose.

As to the claim for monetary compensation for time lost because of this violation we find the evidence establishes that the installation and operation of the pneumatic tube materially reduced the work for messengers. With this reduction in work the Carrier was entitled to reduce its forces accordingly. Just how much work remained and how many positions should have been retained to do it the record does not disclose. However, when the Carrier now returns this work to the proper employees and establishes the necessary positions for that purpose the amount thereof and the number of messengers needed will be established.

It is therefore ordered that when all these duties are returned and positions established to perform them then the number of positions established shall be the basis for the monetary allowance. That is, the claimants, or those who under the rules of their agreement may be entitled thereto, are allowed compensation at the regular rate of the position for the number of positions so established. The allowance to run from September 26, 1946, until the positions are established and occupied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds;

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 Carrier has violated the agreement.

AWARD

Claim sustained to the extent and in the manner as outlined in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 3746

Docket CL-3671

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Kentucky and Indiana Terminal Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The award does not assign to messengers the exclusive operation of the pneumatic tube system nor does it require that any minimum or fixed number of additional messenger positions be established.

What it does hold is: that after the pneumatic tube system was installed and put into operation the carrier assigned to others, not messengers, certain duties which had been previously performed by messengers; that all of these duties should be returned to and performed by messengers; and that a sufficient number of messenger positions be established for that purpose.

Nothing in the award is or was intended to determine in any way the number of messenger positions that would be required for that purpose as the record did not contain sufficient facts to determine that question. What was held is: that the carrier must establish a sufficient number of positions to actually perform all of these duties; and that, after a reasonable time, when the actual number of positions necessary for that purpose have been established then the number of positions established is to be the basis for the monetary allowance.

Referee Adolph E. Wenke, who sat with the Division as a Member when Award No. 3746 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of September, 1948.