

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Alex Elson, Referee.**

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**PARTIES TO DISPUTE:**

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

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

**STATEMENT OF CLAIM:** Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated the Clerks Agreement:

(1) When on May 29, 1950, the Chief Clerk to the Agent and Freight Auditor, requested and instructed Clerk James N. Duroso, Group No. 1 employe, to make certain mail runs on the following day, May 30, 1950, ordinarily and regularly performed by messengers.

(2) And that Senior Messenger, Gregory J. Hartman, be paid at the punitive rate, because of the failure of the Carrier to call him to perform such work.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of May 30, 1950, two group No. 1 Employes in the office of the Agent and Freight Auditor, namely, Messrs. Larry Dolson and J. F. Thomson, reported and confirmed by statements attached as Employes' Exhibits Numbers E-1 and 2 respectively, an alleged violation of our agreement with the Carrier. As Employes' Exhibit No. E-3, we attach statement signed by Clerk James N. Duroso, explaining his part in this matter. As a result of the above, senior messenger, Gregory J. Hartman, filed claim for a day's pay at the punitive rate for not being called to perform work ordinarily and regularly performed by messengers (Group No. 2), which was performed by an employe who was regularly assigned to a Group No. 1 position; claim is attached as Employes' Exhibit E-4. Bulletins E-507 of August 4, 1949 and E-507a of August 6, 1949, describing the position held by Mr. Duroso at the time of this dispute, are attached as Employes' Exhibits E-5 and E-6, respectively.

Mr. Hartman presented his claim addressed to Agent and Freight Auditor, to Local Chairman, G. H. Stephens, for handling, and the Local Protective Committee submitted same with letter dated June 1, 1950, setting the facts in the dispute, and this letter is attached as Employes' Exhibit E-7. Mr. Stephens, Chairman of the Protective Committee, was called into the office of the Agent and Freight Auditor by Chief Clerk, B. J. O'Brien, to discuss the case and was told by the Chief Clerk, that messenger Hartman was not running the office, and Mr. Stephens countered that he was only asserting his rights under the agreement between the Carrier and the Organization.

As you know, we call the employees for holiday work according to the work we want performed on a holiday, but after calling them, they are subject to all the provisions of the agreement, including Rule 48 which provides that employees may be assigned to higher or lower rated work. That is exactly what we did in the case of Clerk Duroso. Manifestly, it follows that when a higher rated employee is required to do higher or lower rated work, that work becomes a part of his duties; consequently, there was no violation of Rule 56(b) as a result of Mr. Duroso using his automobile.

There was not sufficient messenger work necessary to be performed on May 30, a holiday, to warrant calling Messenger Gregory J. Hartman, and the decision of the Freight Auditor denying his claim for a day's pay at the rate of time and one-half was proper. However, if you still wish to discuss the matter in conference, will add this case to the docket being prepared for consideration after our contemplated meeting to discuss reclassification of jobs in the Mail and Baggage Department."

As outlined in the Statement of Facts, the work of the messengers was not involved in the overtime assignments on Decoration Day except to the extent of getting the mail from the three points in question which, it will be noted, occupied only 30 minutes of Clerk Duroso's time. Incidentally, the performance of messenger work by all clerks during a portion of their clerical assignment is not at all unusual. There is a certain amount of such work attached to every clerical position that does not warrant its being bunched to form a messenger assignment, consequently, is done by clerks. When done, it is paid for at the clerical rate in accordance with the provisions of Rule 48.

The work that had to be done on Decoration Day did not involve the messenger assignment except to the limited extent necessary, consequently, there was no violation of Rule 42 when the messenger was not called to work. Neither was there any violation of the schedule in assigning messenger work to a clerk as some portion of the work of every clerk is of a caliber that can be paid for at the messenger rate if it were not for the provisions of Rule 48. There was no violation of that rule as we paid for the messenger work at the clerical rate.

It will be noted from Rule 6 that although messengers and clerks in the same seniority district are carried on separate rosters that there is a close link between the two because an employee promoted from a messenger job to a clerical job is allowed to retain his seniority in the messenger group. It will also be noted from Rule 4 that temporary service in a higher group or on other rosters is specifically authorized because it says that "temporary service does not establish a seniority date in a higher group or on another roster." That provision authorizes a messenger to do clerical work as does Rule 48 which authorizes the performance of clerical work by a messenger or messenger work by a clerk provided certain pay stipulations are met.

It is ridiculous to contemplate calling an employee for service on a holiday requiring payment of eight hours when you know that you have only a few minutes work for him, especially when that employee is covered by the same agreement as the employees who were called to work the entire day, which agreement permits such employees to do work belonging to other forces under the agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a seniority case. The petitioner claims that the Carrier violated the seniority rights of claimant by assigning Group 2 messenger work normally performed by claimant to a Group 1, Rule employee. There is agreement as to the essential facts.

On May 30, 1950, Decoration Day, a holiday specified in the agreement, the Carrier instructed Clerk James N. Duroso, Group No. 1 employe, to report and make certain mail runs ordinarily performed by messengers. Duroso left home one hour earlier for that purpose and with the use of his automobile made the runs in about 30 minutes before he reported for his regular group assignment as a Group 1 Clerk at 7:30 A. M. Because he left an hour earlier, he was excused from work an hour before his regular quitting time.

Petitioner contends that the Carrier violated Rules 4 and 6 of the agreement. These rules are set forth above. Under Rule 1, clerks such as Duroso are in Group 1; messengers are in Group 2. Rule 4 provides that seniority rights are by groups. Rule 6 provides that separate seniority rosters will be established to cover employes in Groups 1, 2 and 3 of Rule 1, except for the office of General Baggage Agent.

Duroso, although in Group 1, under Rule 4(c), retained and continued to accumulate seniority in Group 2. However, Rule 4(c) provides that employes retaining such seniority must exhaust their rights in the higher group before they can return to the lower group. On May 30, 1950, Duroso continued in his Group 1 position and did not exhaust his right in that group before performing the work of Group 2.

Carrier justifies its assignment of Duroso by relying on Rule 40. This rule should be considered together with Rule 39(f) and Decision No. 2 of the 40-Hour Week Committee. The pertinent parts of these provisions read as follows:

"RULE 39. (f) Work on Unassigned Days. Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work in that week; in all other cases, by the regular employe."

"RULE 40. Employes notified or called to perform work not continuous with, before or after, the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

Employes notified or called to perform work on their assigned rest days or on holidays shall be paid a minimum of eight (8) hours at time and one-half rate."

"Decision No. 2. Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used. Rules in existing agreements shall be modified to conform with the intent above expressed. Wherever the words 'the regular employe' are used in this paragraph, they shall mean the regular employe entitled to the work under the existing agreement."

None of these provisions authorize the Carrier to make the assignment in this case. If, as the Carrier contends, the messenger work involved in this case was overtime and not part of an assignment under Decision No. 2, the messenger work belongs to the regular employe—in this case, a regular Messenger, Group 2.

We do not hold, nor are we required to hold, that messenger work exclusively belongs to messengers. Under the facts of this case, we hold the particular messenger work performed by the clerk should have been performed by the messenger. This was not incidental messenger work performed during the clerk's regular hours. Instead it was necessary for the

clerk to begin work an hour early to make the mail runs which the messenger ordinarily made during the same period of time. We believe the seniority rights of the claimant were violated. See Awards 973, 2354, 3746, 4076 and 5105.

It is obvious that the Carrier's motive was that of economy. While this is a praiseworthy motive, it does not warrant a violation of the agreement, nor does it permit this Board to sanction such a breach.

**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 violated the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon,  
Acting Secretary.

Dated at Chicago, Illinois, this 11th day of July, 1951.