

Award No. 5698

Docket No. CLX-5566

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

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**PARTIES TO DISPUTE:**

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

**RAILWAY EXPRESS AGENCY, INC.**

**STATEMENT OF CLAIM:** Claim of the District Committee of the Brotherhood that

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at the West Plains, Mo. Agency when the Carrier refused to allow employe Carter Johnson to exercise his seniority rights over R. S. Fisher;

(b) He shall now be compensated for all wage loss sustained at the rate of \$300.10 per month from Jan. 10, 1950 and subsequent thereto, until he is assigned to the position;

(c) He shall receive time and one-half times' the Agent's rate of pay for all hours worked in excess of 8 on any day and 40 in any week by R. S. Fisher, retroactive to and including Jan. 10, 1950; and

(d) He shall be allowed interest at the rate of  $\frac{1}{2}$  of 1% per month on all monies withheld by management through their arbitrary action in withholding him from the Agent's position:

Note: The hours worked by Agent Fisher in excess of 8 on any day and 40 in any week, subsequent to Jan. 10, 1950, to be ascertained through a joint check by the parties.

**EMPLOYEES' STATEMENT OF FACTS:** Employe Carter Johnson, with seniority date of September 6, 1929, was regularly assigned to Position 1, Group 5, Clerk-Chauffeur, salary \$228.80 basic per month, at West Plains, Missouri, prior to December 25, 1949. Effective that date, his position was abolished.

As this was the last-remaining classified position at West Plains, Missouri, this made the Agency a "1-man Agency," and he notified Superintendent Fred Howell of his intention to exercise his seniority by displacing R. S. Fisher (an employe who has no seniority in that Seniority District), the Agent at that location. (Employees' Exhibit "A")

**OPINION OF BOARD:** This claim had its inception when the Agency, at West Plains, Missouri, abolished the position of Clerk-Chauffeur, held by Carter Johnson with seniority dating from September 6, 1929 on the West Plains seniority district, and refused his request to displace R. S. Fisher from the position of Agent. Fisher held no seniority rights on the West Plains seniority district but did on the El Dorado, Arkansas, seniority district.

Due to decline of business, the Agency abolished the position of Clerk-Chauffeur as of December 25, 1949. However, having failed to comply with the requirements of the second paragraph of Rule 19 of the parties' Agreement effective September 1, 1949, that date was extended to January 10, 1950. After abolishing the position, Agent Fisher, with regularity, performed all of the duties at West Plains and was the only employe on duty at that point. Johnson became a furloughed employe.

The Scope Rule of the parties' Agreement effective September 1, 1949 provides, as far as here material, as follows:

"Rule 1. These rules shall govern the hours of service and working conditions of all employes in service of the Railway Express Agency in the United States subject to the exception noted below:

"Exceptions

"These rules shall not apply to—

\* \* \* \*

"(c) Agents (except Agents at one man offices) and their superiors in official rank."

The question presented is, did West Plains, under the circumstances herein set forth, become a one-man office? If it did, then the position of Agent came within the Scope of the parties' Agreement and Johnson's request to displace Fisher should have been granted.

The same contention as here made has been twice denied. First by Board of Adjustment No. 1 by Decision 1302 rendered on October 30, 1933 and again by Express Board of Adjustment No. 1, Decision E-943, on November 19, 1938. It is the holding in the latter decision upon which the Agency here relies as on and after January 10, 1950 Johnson became a furloughed employe at West Plains. Therein it was stated: "The Board understands there are one or more employes occupying the status of either furloughed or Extra List employes as defined in the rules at these offices. Under these circumstances the position of Agent cannot be considered as classified."

In the Agreement establishing these Boards the parties provided that the decisions of the Boards should be final and binding upon the parties and it should be the duty of both to abide by such decisions. It is the thought of the Agency that that is exactly what it is here doing.

The Brotherhood contends that these decisions grew out of a factual situation to which "Addendum A" of the Agreement in force at the time these decisions were rendered was applicable and the basis thereof, and that since "Addendum A" has been removed from the Agreement effective September 1, 1949 the decisions are no longer controlling. While there may be some merit to this contention as it relates to Decision 1302, but neither Decision so states and the language of E-943 seems to preclude it as a basis for the decision therein arrived at.

Ordinarily we recognize that the interpretation placed upon the rules of an agreement by a Board is binding on this Division. See our Awards 3628, 4388 and 4616. However, that is not necessarily true any more than we are

bound by our own awards if we come to the conclusion that what was previously held is clearly wrong.

Scope Rules do not relate themselves to whether or not there are men available to perform the work covered thereby, but do relate themselves to the work which the Carrier, here Express Agency, has performed which comes within it. Here, ever since January 10, 1950 the Agent, with regularity, performed all the work which the Agency had at West Plains. It is difficult to understand how, under this Scope Rule, it did not become a one-man office. In fact, we find it did and that Johnson should be permitted to immediately displace Fisher.

As to the claim for retroactive pay, we think it should be denied. The Agency was abiding by Decision E-943 and this was in accordance with the parties' Agreement that it would. Until such interpretation is changed it had a right to do so and should not be penalized. In view thereof, the question of whether or not the claim was properly amended to include overtime and interest becomes immaterial.

**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 Agency violated the Agreement.

#### AWARD

Claim (a) sustained. Claims (b), (c) and (d), including "Note" denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.