

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**

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 and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at the McGehee Arkansas Agency, June 10, 1949, when the starting time attaching to position 4, group 2 titled "Clerk-Chauffeur", covering the period 10:00 A. M. to 10:00 P. M. daily except Sunday, and constituting one-half of the 24 hour, daily cycle, was changed, and the work, duties and responsibilities between 8:00 A. M. and 7:30 P. M. assigned to the incumbent of the position of Agent, which position is excepted from agreement coverage;

(b) All such work or duties and responsibilities performed and assumed by the Agent between the hours of 8:00 A. M. and 7:30 P. M. shall be restored to the scope and operation of the agreement;

(c) All employees adversely affected shall be compensated for monetary losses sustained, retroactive to and including June 10, 1949 and continuing, up to the date when the agreement violation complained of has been corrected; and

(d) Management shall be required to make available to employee representatives the daily payroll of the McGehee Agency operation covering the period in question for the purpose of determining the gross amount of daily earnings loss sustained by classified employees in pursuance of their relative seniority and availability.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 10, 1949, the express force at McGehee, Arkansas consisted of the Agent and two classified positions, bulletined to work as follows:

"Position 4, Group 2, Clerk-Chauffeur,

*10:00 A. M. to 12:20 P. M.—5:00 to 10:00 P. M., day of rest Sunday,

Salary \$216.95 basic per month."

It follows, therefore, that the proper construction to be placed upon the Agreement, is that the specific situation contemplated by Note 1 to Rule 1 prevails over the general provisions. Any other construction would make Note 1 to Rule 1 meaningless and would be contrary to the intent of the parties. Attention is directed to the fact that Note 1 to Rule 1 appears for the first time in the Agreement of August 1, 1937, and has been continued without modification in the revisions of the Agreement which became effective October 1, 1940, and September 1, 1949.

Note 1 to Rule 1 restricts Agents from performing regularly routine work, only at offices where more than five full-time employes are regularly employed to care for local operations. There is nothing in this Rule or any other Rule of the Agreement prohibiting the Agent at McGehee, Ark., from performing routine work of whatever nature, including transfer. All work at McGehee, Ark., required during daylight hours can be satisfactorily handled by the Agent without assistance. No employe has been adversely affected, and no employe has sustained monetary losses as a result of the re-arrangement of positions effective June 10, 1949. The two full-time classified positions in effect prior to the re-arrangement on June 10, 1949, have been retained, although the hours of one of them have been changed to meet the needs of the business. The only effect of the reduction in force June 10, 1949, was the abolishment of the part-time position, but nothing in the Rules precludes the re-arrangement of forces, or the abolition of positions not needed.

Employes have completely failed to meet the burden of proof to sustain their claim that all work, duties or responsibilities performed by the Agent between the hours of 8:00 A. M. and 7:30 P. M. shall be restored to the scope and operation of the Agreement. No work has been removed from the scope of the Agreement and the claim in the instant case should be denied in its entirety.

All evidence and data set forth have been considered by the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arises out of the performance by the Agent at McGehee, Arkansas, an excepted position under Rule 1 (c) of the parties' Agreement effective October 1, 1940, of routine agency work following the change made by the Agency in the working schedules of its forces at that point effective as of June 10, 1949.

Prior to June 10, 1949, the two classified positions at McGehee of Clerk-Chauffeur were so established in intermittent service that they practically covered a 24-hour period of time. After June 10, 1949, the hours of service of these two positions were so arranged that neither of the employes occupying these two positions were on duty between 8:00 A. M. and 7:30 P. M. and all the work incident to the maintenance of the office at McGehee during these hours was performed by the Agent.

There is nothing in the Agreement that prevented the Agency from re-arranging the working schedules of its employes at McGehee except that it could not do so if the changes resulted in a violation of the Scope of its Agreement with the Brotherhood then in effect. This rearrangement resulted in the Agent at McGehee performing some duties which prior thereto the Clerk-Chauffeur on duty between the hours of 8:00 A. M. and 7:30 P. M. had been performing.

It is a fundamental rule that work of a class covered by an agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the agreement is violative of the agreement except as the parties in their agreement may otherwise provide.

Under the factual situation existing at McGehee on June 10, 1949, Note 1 to Rule 1 of the parties' Agreement effective October 1, 1940 is applicable to the position of Agent at that point. This Note provides:

"Employees excepted in this Section (c) will neither be required nor permitted to perform regularly routine agency work, except at offices where not to exceed five (5) full-time employees are regularly employed to care for local operations, not including those required to handle transfer at such offices."

This Note specifically authorizes the Agency to have the Agent at McGehee regularly perform this routine agency work and no violation of the parties' Agreement results from his doing them.

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

Agency did not violate the Agreement.

AWARD

Claim 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.