

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

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, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees was violated in calculating the earnings due J. H. Winters for the work which he performed, duties and responsibilities which he assumed on Union Pacific Train No. 19; and

(b) He shall now be paid at the rate of \$288.10 basic per month for trip made April 24, 1948 and for subsequent dates under the same circumstances, until the route to which he was assigned was discontinued effective July 2, 1948.

EMPLOYEE'S STATEMENT OF FACTS: There is in existence in the Washington-Alaska-Yukon Seniority District a joint-messenger-baggage-man route known as the Spokane, Washington-Portland, Oregon Route, Union Pacific Railroad Trains 19 and 20. The rate of pay for this route for each messenger is \$288.10 basic per month.

For a number of years there has also been in existence in the W. A. Y. Seniority District a messenger-helper position known as the Portland-Arlington, Oregon Route, Union Pacific Trains 20 and 19, salary \$255.60 basic per month. This route operated nightly, except Saturday, from Portland. The employee went east on Train 20 working as helper to the messenger who was regularly assigned to operate that train. Spokane, Washington-Portland, Oregon Route. At Arlington, the helper reached his outer terminal and then returned to Portland on Train 19, working as helper to the messenger regularly assigned to operate on that train.

The position of helper was bulletined as a result of a vacancy. Bulletin No. 22, dated April 8, 1948, described the duties of the position as follows: "Assist messenger handle express, U. P. Trs. 19 & 20." (Exhibit A) It was awarded to J. H. Winters April 19, 1948.

The consist of Union Pacific Railroad Train 19 insofar as the head-end was concerned was as follows, starting with car immediately behind the engine as No. 1:

Douglass in Decision E-1319 held that in line with precedent decisions when an employe works one leg of an assignment as helper and another leg as messenger he is entitled to the messenger rate. That decision has no application in the instant case.

Decision E-1320 also cited by Employees is a companion case to that covered by E-1319 and needs no further comment.

In Decision E-1383 cited by Employees, Referee Messmore reviews prior decisions discussed above and held that the facts in the instant case disclosed that the Helper took on and put off express traffic for all points between Chicago and St. Louis independently and separately from the Messenger, thus meeting the test laid down by Referee Swacker in Decision E-661 and therefore was entitled to Messenger pay.

Carrier asserts that the claim in behalf of helper Winters that he performed Messenger duties on the dates in question is entirely unsupported by evidence of probative value; that the precedent decisions cited by Employees in fact do not support a claim for Messenger rate in the instant case, but on the contrary are in accord in all respects with the principle enunciated by Referee Swacker in Decision E-661 that the test is—if complainant is not working intermediate stops his proper classification is that of a helper; if he is working intermediate stops he is a Messenger; that the fact that the cars in which claimant works are separated from the Messenger car is not controlling. The claim is entirely without merit and should be denied.

All evidence and data have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant J. H. Winters was, on April 19, 1948, assigned as messenger-helper on Union Pacific Trains Nos. 20-19, Portland, Oregon to Arlington, Oregon and return, to assist the messenger in handling express. This dispute arises over the basis of his pay from April 24, 1948 to July 2, 1948 in connection with his working on Train No. 19, Arlington to Portland. The position of messenger-helper was discontinued on July 2, 1948. Claimant was paid on the basis of a messenger-helper for these services. He claims he should have received the pay of a messenger.

The question is a factual one for if claimant performed duties and fulfilled responsibilities of a messenger during these trips on Train No. 19, Arlington to Portland, irrespective of the fact that the messenger was also on the train, he would be entitled to pay as a messenger therefor under Rule 80 of the parties' Agreement.

The principles here applicable have been announced by Decisions of Express Board of Adjustment No. 1. In its Decision E-1383, it said of its Decision E-661 that therein "the test mentioned was whether or not the Helper worked intermediate stations loading and unloading express into and out of the cars***. If so, he should be rated as a Messenger and paid accordingly", and in Decision E-1219 the test set out was "Unless the facts are such as to show the Helper to be in actual and active subserviency throughout the journey with no actual charge of an express car, he must be classified as Messenger."

The burden of establishing facts sufficient to require the allowance of a claim is upon him who seeks its allowance.

It is apparent from the consist of Train No. 19 that claimant, in a large measure, was compelled to act separately and independently from the messenger in handling his express car as there could be no actual and active supervision of the helper by the messenger while the train was enroute.

There is a dispute as to whether or not claimant unloaded express at intermediate points. Claimant positively states he did at both The Dalles and Hood River until he received Superintendent Fitzgerald's letter dated May 24, 1948. After receiving the claim, the Agency says it made a unilateral check and found no evidence that express had been delivered to The Dalles and Hood River from the car in which claimant was working at any time during the period covered by the claim. Just what records are kept which would show this fact and what records were checked is not fully shown. We think the Agency should, after claim had been made, have given some recognition to the claimant by going over the matter with him or his representative as far as this check is concerned. There is no reason to believe claimant is dishonest and certainly he should know what he did. Under all of the circumstances disclosed by the evidence we think he did work the intermediate points of The Dalles and Hood River until he received the Superintendent's letter of May 24, 1948.

Considering the facts shown by the record and the principles which Express Board of Adjustment No. 1 has said should control, we find the claim, as made, to be meritorious.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

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