Award No. 5846
Docket No. CLX-5814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, 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 Employes, effective September 1, 1949, was violated at San Francisco, Calif. when the Carrier failed to assign train service employe H. L. McClelland from the San Francisco Extra Messangers' Board to protect a guard trip on Southern Pacific (Pacific Lines) train No. 24, San Francisco to Ogden, Utah on October 21, 1950, and;

(b) He shall be compensated for one trip San Francisco to Ogden, or 50 hours, amount of $74.50 account of Special Agent from the Prevention and Security Department assigned to act as guard in violation of the Scope Rule and Rule 74 (d) of the Agreement.

EMPLOYES' STATEMENT OF FACTS: H. L. McClelland, with a seniority date of July 14, 1937, as of October 21, 1950 held a regular assignment as extra express messenger on the San Francisco Extra Messengers' Bid Board covering the Northern California-Nevada-Oregon Division. This board operates on a "first in first out" basis, protecting runs assigned to the Board. The San Francisco, Calif-Ogden, Utah route is a run assigned to the Board.

October 21, 1950, a shipment of valuable art treasures from the M. DeYoung Museum, San Francisco, Calif. was shipped in Penna. Car No. 6089 consigned to the Chicago Institute of Art, Chicago, Ill. This car was handled in Southern Pacific (Pacific Lines) train No. 24, San Francisco to Ogden, Utah. Special Agent Tidmore from the Prevention and Security Department accompanied the car in the capacity of guard.

October 24, 1950 Extra Train Messenger H. L. McClelland wrote Superintendent G. H. Graham, filing claim for guard trip to Ogden, Utah on Southern Pacific train No. 24, October 21, 1950. (Exhibit "A".)

October 25, 1950 Superintendent Graham declined claim of McClelland, stating investigation indicated the armed messenger on train No. 24 was the

There was no violation of Agreement rules when the Carrier failed to provide additional guard service not needed on the trip on S.P. train 24, Oakland Pier to Ogden, October 21, 1950, and assign Extra Board Messenger McClelland on that occasion. The claim is entirely without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On October 21, 1950 a shipment of art treasures was shipped from San Francisco, California over the Southern Pacific Lines with destination Chicago, Illinois. The shipment was in Penna. Car No. 6089. The car was locked and sealed. It first moved in Train No. 158 to San Jose. There was no regular messenger assigned to No. 158 but an extra messenger was called to accompany the movement. It then moved in Train No. 73 to Oakland Pier. A regular messenger was assigned to this train. It moved from Oakland Pier to Ogden, Utah in Train No. 24. A regular messenger was assigned to this train. All movements were in charge of an extra or regular messenger.

The General Claim Department assigned a Special Agent not covered by the Agreement to accompany the train from San Francisco to Ogden.

The Organization contends that an available messenger or train service employe instead should have been assigned as guard and that failure so to do was a violation of the Scope Rule and Rule 74 (d) of the Agreement. H. L. McClelland was the available messenger hence the claim is made in his behalf.

The first paragraph of the Scope Rule is as follows:

> "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 exceptions noted below."

Messengers and train service employes are not excepted but special agents, their personal office forces, special officers and patrolmen are. The Special Agent assigned in this instance came within the exceptions.

The pertinent part of Rule 74 (d) is as follows:

> "Train service employes shall be used to perform all extra, substitute or relief train service work except that in cases of emergency where no extra train service employes are available, * * *"

It is not contended that an emergency existed in this instance. The question for determination therefore becomes that of whether or not the Special Agent was assigned to perform train service. This must depend for the most part, if not altogether upon the factual situation as disclosed by the record.

The record does not disclose that he was placed in charge of the car or the shipment or that he assumed to exercise or could have exercised any right of control over it. Insofar as train service was concerned there is nothing to indicate that this was not in complete charge of the Messenger. On at least one occasion the Special Agent examined the seals on the car, it is true, but there is nothing in this to indicate anything beyond policing. There is nothing to indicate that any train or messenger service in additon to that given the shipment by the regular messenger was required.

From the record it appears that the Carrier decided as a precautionary measure to police the train in the movement of this shipment. And so long as it did so without performance by the Special Agent of any of the service

required of train service employes within the meaning of the Rules no penalty could flow therefrom. It is not found that the Special Agent performed any such service.

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 Employes involved in this dispute are respectively Carrier and Employe 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

The claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 30th day of June, 1952.