Award No. 5973
Docket No. CLX-5949

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, 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.

(a) The agreement governing hours of service and working conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective September 1, 1949, was violated November 27, 1949 on the Portland-Ashland, Oregon Route, Southern Pacific Train No. 330 when Carrier, after alleged discontinuance of express service on S. P. Train 330 on Sunday nights, continued to handle such traffic; and

(b) The senior unassigned train service employes, in the order of their availability and/or extra and regularly assigned employes, shall be paid for the scheduled hours of Train 330 for each Sunday retroactive to and including November 27, 1949; and

(c) Management shall now be required to make a joint check of express traffic handled on Train 330 out of Ashland, Oregon retroactive to and including November 27, 1949, such check to include identification of the available train service employe or employes for service on Train 330 out of Ashland Terminal for each Sunday night covering the period in question.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949 daily service was maintained on Southern Pacific Trains 329 and 330, Portland-Ashland Route, operated by a pool of five messengers on the following schedule:

Report Portland Tr. 329 6:00 P.M. Release Ashland 9:20 A.M.
Report Ashland Tr. 330 5:00 P.M. Release Portland 7:40 A.M.

Effective that date, it was alleged by Management that express service was discontinued on S. P. Train 329 out of Portland on Saturday nights and on Train 330 out of Ashland on Sunday nights. The schedule of the five-messenger pool was rearranged accordingly. However, there was no change in the reporting and release time.

It developed, however, that express traffic is still being maintained on Train 330 out of Ashland, Oregon on Sunday nights. Illustrative of which

senger. The claim, therefore, that any work was lost to train service employes is wholly unsupported.

Carrier has established that with respect to item (a) of the claim filed with the Board on October 24, 1951, that no specific rule or rules of the Agreement effective September 1, 1949, have been cited as having been violated, neither has any specific rule or rules been cited as having been violated during the course of handling the dispute on the property.

That with respect to items (b) and (c) of the claim filed with the Board, the Carrier has established that the claims are vague, indefinite and undefined, in that no employe or employes are named, nor dates on which such employes are alleged to have been adversely affected.

That notwithstanding and without prejudice to its position in respect of the above, Carrier has established that no violation of the Agreement occurred, and submits that the Board should deny the claim in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The relevant and material facts are not in substantial dispute. It appears from the record daily express service was maintained on the Portland, Oregon-Ashland, Oregon route. Southern Pacific trains Nos. 329 and 330 operated by a pool of five messengers. From and after September 1, 1949, the route continued to operate with the same number of messengers in the pool, but service was reduced to six days a week. The carrier is alleged to have discontinued express service on train No. 329 from Portland on Saturday nights and on train No. 330 from Ashland on Sunday nights.

The reporting and release time schedule of the messengers on the days work was changed and is as follows:

Report Portland, Train No. 329	6:00 P.M.
Peport Ashland, Train No. 330	5:00 P.M.
Release Ashland	9:20 A.M.
Release Portland	7:40 A.M.

The agreement between the parties effective September 1, 1949, under Rule 65, states that 170 hours or less constitutes a month's work for train service employes on runs in regular assignment. Prior to September 1, 1949, or to the 40-hour week agreement, the month's assignment under the agreement was 190 hours.

No express messenger worked train No. 329 from Portland, the home terminal, on Saturday nights, nor out of Ashland on train No. 330 Sunday nights. Ashland is an outside terminal. The Express Agency at Ashland is a commission agency. The car in which the messenger works is an open, or line car. A baggage man also works this car.

On certain Sundays Joy Garden's firm loaded produce into this car for train No. 330 out of Ashland. This produce was to be unloaded at Portland for the firm's customers. The dates of such shipments appear as follows:

April 23, 1950,	40 crates of radishes
May 28, 1950,	2 crates iced radishes and
	140 crates dry radishes, total 5,000 pounds
July 9, 1950,	15 crates of radishes
October 22, 1950,	8 crates of radishes
November 12, 1950,	3 crates of radishes.

On June 18, 1950, express traffic was loaded enroute, 1 box iced fish from Newport, Oregon, to Milwaukee, Wisconsin, loaded at Eugene, Oregon, and removed from train 330 at Portland. These instances are cited in support of Employes that the Carrier did not discontinue express messenger service on train 330 out of Ashland on Sunday nights as contended by the Carrier, and the work for express messengers is still existent at that point Sunday nights.

The Employes contend that permitting or requiring shippers to handle express traffic as was done in this case, deprives the express messengers holding seniority in train service in the ruling seniority district work that rightfully belongs to them, because such work was turned over to non-employes or others not covered by the agreement.

Contra to the Employes' contention, the Carrier asserts these shipments referred to are not unloaded at intermediate points and require no attention in traffic. It is loaded at an outside terminal and unloaded at Portland—the home terminal. Further, it is the work of a train messenger to unload traffic at intermediate points or to serve as a custodian with money waybill traffic. Messengers are not required in connection with traffic loaded at a terminal or unloaded at an opposite terminal. In this case there was no reduction of employes or in their pay. They were provided less hours of work. Messenger service has not been provided for such traffic.

In this connection, Rule 1 of the Agreement being effective, dated September 1, 1949, is cited: "Employes Affected. Rule 1. These rules shall govern the hours of service and working conditions of all employes of the Railway Express Agency in the United States . . ." No exceptions listed in Rule 1 effect the rights of train service employes in this case.

The employes assert the above rule brings all the usual handling of normal express traffic within the scope of the working agreement, i.e., handling of express traffic on trains. In this instance, the sorting or stowing of express and the general care of express traffic in open or line cars, as being recognized as the work of an express messenger. The Carrier asserts there is nothing in Rule 1 which specifies the work which the agreement covers.

Scope Rule 1 is similar to scope rules in force on other properties. We believe the following award pertinent to this proposition, and sustains the Employes' conception of Rule 1 above.

Award No. 5526, in part, states: "For some considerable time our awards dealing with the scope rules of agreements have followed a rather consistent pattern. As to scope rules similar to that here involved, we have held that while they do not purport to describe the work encompassed but merely set forth the classes of positions to which they are applicable, yet the traditional and customary work assigned exclusively to those positions constitutes work falling within the scope of the agreement, and it is a violation of the agreement for the Carrier to permit persons not covered by the agreement to perform it."

The proposition of removal of work from the scope of the agreement and turning it over to employes coming under other agreements, or to non-employes has been considered by this Board and other boards handling disputes growing out of the application of working agreements. The following is applicable:

Award No. 5700, this Division, states: "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 in violation of the agreement except as the parties in their agreement may otherwise provide." See Awards 180, 323, 331, 360, 521, 1647, 2686, 4513, 4934.

Award No. 385, this Division, reads in part: 'It is well established under the collective agreements of the character here involved that while the Carrier is free to abolish positions, such work as remains in connection with these positions must be performed by the class of employes to which the agreement applies."

This Board in several awards has held where work is under agreement for five or six days of the week, that it is also under the agreement for the other day or days. Employes not under the agreement, or non-employes, are not privileged to perform such work. See Awards 4477, 3858, 3425, 2545, 5622, 2686, 4832.

From an analysis of the record it is apparent that the work of receiving, sorting and stowing express into this car, and general care of express therein belongs to the express messengers who perform this work on the same route the other six nights of the week, and this work traditionally has been done by the express messengers on train No. 330 out of Ashland on Sunday nights until the Carrier allegedly discontinued such service. We conclude the agreement has been violated as contended for by the employes.

The Carrier moves for dismissal of item (b) of the claim, in that item (b) thereof is vague, indefinite, and undefined because it does not specify individuals for whom claims for reparations are made, nor the dates or facts to which claims relate. Also for the reason that it is well established that a carrier may not be required to develop information to serve as a basis of claims against itself, citing Award 4821 to the effect: "A carrier will not ordinarily be required to search its records to develop claims against itself."

On this phase of the case we believe the following language from Award 5107 to be pertinent and applicable: "We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employes that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The organization is authorized to represent the employes . . ." See Awards 4482, 3617, 2240.

The Carrier objects to and moves for dismissal of item (c) of the claim. This item is a request that the Carrier be required to make a check of express handled on train No. 330 retroactive to November 27, 1949, to also include identification of train service employe or employes available for service on each Sunday night covering the period in question, for the Carrier may not be compelled to develop information to serve as a basis of claims against itself. We believe this contention cannot be sustained. We make reference to Award 5700 which in part says: ". . . it should be remembered that the records of the Agency asked for by (c) are not to develop claims for the employes but only to determine the extent of the reparations to be paid on the claims made; if allowed. As said in Award 4821 of this Division: 'A Carrier will not ordinarily be required to search its records to develop claims against itself. But when a claim has been established and the date of the violations are determined, the carrier can be required to supply the names or permit a representative of the organization to search them out.' See also, to like effect, Interpretation No. 1 to Award 1421 and Award 4445 of this Division. . . . We think the records of the Agency should be made available for joint check by the parties for the purpose of determining the extent of the work done by the Agent on Saturdays, which, from Monday through Friday, was work assigned to and performed by the clerk-chauffeur, . . ."

The applicability of the afore-cited award to this case is patent. A joint check would develop the factual details of the violation of the agreement by

the Carrier, and would not result in the Carrier furnishing information against itself upon which a claim may be predicated against it in so far as this particular case is concerned.

The claim must be sustained.

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 Employes 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 as contended.

AWARD

Claim (a, b, and c) sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.