

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, 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 September 1, 1949, was violated at the Springfield, Missouri Agency, December 25, 1950 and January 1, 1951, respectively, in making a run-around on call of R. K. Benson, Cashier-Money Clerk, to work his regular assignment; and

(b) He shall now be compensated for 8 hours at time and one-half rate at \$284.02 basic per month, for December 25, 1950, and January 1, 1951, respectively.

EMPLOYEES' STATEMENT OF FACTS: R. K. Benson, with seniority dating from February 17, 1917, is regularly assigned to position 1, group 4, titled "Cashier-Money Clerk," hours of assignment 8:40 A.M. to 5:40 P.M., meal period 12:00 noon to 1:00 P.M., days of rest Saturday and Sunday, salary \$284.02 basic per month.

December 24 and 31, 1950, Benson was notified that his position would not work December 25, 1950 (Christmas) and January 1, 1951 (New Year's), account of legal holidays; hence should not report for work on those dates.

Investigation developed the fact, however, that December 25, R. W. Beck, a regularly assigned employee, one of whose rest days was December 25, was called and used as a Money Clerk, 8:20 A.M. to 4:50 P.M., and January 1, 1951, J. J. Strom, a furloughed employee, was called and used as Money Clerk, 7:00 A.M. to 3:30 P.M. Both employees Beck and Strom, on December 25 and January 1, respectively, performed all of the Money Clerk duties normally and customarily attaching to position 1, group 4, Cashier-Money Clerk, to which Benson was regularly assigned.

January 4, 1951, Vice-Chairman W. W. Watson filed claim with General Agent E. E. Taylor in Benson's favor for 8 hours' pay at time and one-half rates for December 25, 1950 and January 1, 1951, respectively, setting forth the fact that position 1, group 4, worked on both dates, although Benson, the regular incumbent was denied the right to perform the work. (Exhibit

As in the McManis case, the employees who worked the position of Money Clerk on the Holiday, Beck on December 25, 1950, and Strom on January 1, 1951, checked out Messengers on three trains—accounting for approximately fifteen minutes time—which work is normally that of Money Clerk. With this exception, none of the work performed by employee Beck on December 25, 1950, or employee Strom on January 1, 1951, was work performed by the Cashier on his regular tour of duty.

Employees have completely failed to establish that employees Beck and Strom substantially performed the duties of Cashier on December 25, 1950, and January 1, 1951, respectively. The claim of Cashier Benson for a full day's pay at time and one-half on those dates is entirely without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: There is in evidence an agreement between the parties bearing effective date of September 1, 1949.

The claim is (1) that a call was not given R. K. Benson, Cashier, by the Carrier on December 25, 1950, and January 1, 1951, to work his regular assignment. (2) That he be compensated for 8 hours at time and one-half rates at \$284.02 basic per month for the days in question.

On June 7, 1950, the position of Money-Clerk was abolished at this agency. The letter of E. E. Taylor, General Agent, reads as follows:

"In discontinuance of money clerk position now occupied by J. O. Lynch, it is the intention to have Mr. Benson check money run from night money clerk at 8:50 A. M., and in turn check it out to the chauffers. Also Mr. Benson will check out messengers for Trains Nos. 6, 20 and 104. However, will not be required to take them to the train. That part of the work will be handled otherwise.

"Mr. McManis is at this time giving all the assistance possible when he reports at 8:00 A. M. in getting the chauffers away from the depot, and it is expected that he will continue to perform these duties as at present and to greater extent if possible."

On December 24 and 31, 1950, the Claimant was notified by the Carrier that his services would not be required on December 25, 1950, and January 1, 1951, because they were legal holidays.

On December 25, 1950, R. W. Beck, a regular assigned employee, on another position of Money Clerk, another shift, who was then off duty on a rest day, was called and used to perform the Money Clerk work at this agency, 8:20 A. M. and 4:50 P. M. On January 1, 1951, J. J. Strom, a furloughed extra employee, was called and used to perform the Money Clerk work at this agency, 7:00 A. M. and 3:30 P. M.

The Organization contends that the Money Clerk work performed on the above days was part of the position of the Cashier Claimant. The Carrier contends that there were no Cashier duties on the above dates.

The Employees rely upon Decision 2 of the Forty Hour Week Committee with respect to holiday work. The Carrier states that it was not a party to the Forty Hour Week national negotiations which developed into the Agreement of March 19, 1949, and did not participate in the Committee, therefore, the holiday work rule did not become part of its agreement. From the above

facts the holiday work rule, Decision 2, as set forth by the Forty Hour Week Committee is not binding on this Agency.

The Employees state that Rule 45-A (j) was violated.

"(j) Work on Unassigned Days. Where work is required by the management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases, by the regular employee."

This rule states that the Carrier **may** assign the work which is not part of any assignment to an available extra or unassigned employee who will otherwise not have 40 hours of work that week. Holidays are not part of the assigned days for this Claimant.

The Carrier states that on December 25, 1951, no extra or furloughed employee being available, the senior Money Clerk was called. A furloughed (extra) employee was called on January 1, 1951. No showing in the docket has been made by the Employees that work of the Claimant Cashier was performed on December 25, 1950, and January 1, 1951. Therefore, the claim must fail.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of February, 1953.