

Award No. 6131  
Docket No. CLX-5934

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul G. Jasper, 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 when the salary of messenger position, Chicago, Rock Island and Pacific Trains 151-152, Little Rock-Hot Springs Route, was reduced from \$283.10 to \$263.10 basic per month, effective February 1, 1949;

(b) R. L. Jones, et al, shall be compensated for all salary loss sustained retroactive to and including February 1, 1949; and

(c) Management shall be required to make a joint check of the payrolls for the purpose of ascertaining the dates on which relief employes were used on this assignment, and the name or names of such employes.

**EMPLOYEES' STATEMENT OF FACTS:** Effective September 12, 1937 a pool of two messengers was established to operate on alternate days, Memphis, Tennessee to Hot Springs, Arkansas, Chicago, Rock Island and Pacific Trains 45-50, salary \$152.20 basic per month, working as follows:

Train 45—Depart Memphis	8:20 A. M.
Arrive Little Rock, Ark.	11:05 A. M.
Arrive Hot Springs, Ark	1:00 P. M.
Train 50—Depart Hot Springs, Ark.	2:30 P. M.
Arrive Little Rock, Ark.	4:05 P. M.
Arrive Memphis	7:15 P. M.

The rate of pay was protested by the Organization, and was adjusted to \$172.20 basic per month by Decision E-662 dated February 24, 1938.

This pool continued and was maintained until February 1, 1949, when Chicago, Rock Island and Pacific Trains 45-50 were discontinued. (As a

Even if Decision E-662 had any bearing in the instant case, and it does not, rates of pay on runs involved in that decision as held by Referee Swacker were subject to change in accordance with appropriate rules of the Agreement (Rule 82) dependent upon subsequent changes in service and conditions.

Mr. Wright cited also Decision E-1062 dealing with the restoration of the through rate of pay on the Little Rock-Texarkana portion of the St. Louis-Texarkana Route trains 21-22. That case bears no resemblance to the instant case. No facts are stated in Decision E-1062 but the case involved the rate of pay of the Little Rock-Texarkana Route covering trains 21-22 formerly included in the pool operating between St. Louis and Texarkana. Trains 21-22 continued to operate between Little Rock and Texarkana after the pooled service on 21-22 was split at Little Rock.

Trains 45-50 formerly operating between Memphis and Hot Springs did not continue to operate between Little Rock and Hot Springs. They were eliminated for the entire distance between Memphis and Hot Springs. Trains 151-152 were entirely new trains and new service and so acknowledged by General Chairman Wright. Carrier has fully demonstrated that there is no proper basis for the claim on the facts or that the rules of the Agreement have been violated, and that the decisions cited by Mr. Wright are not at all in point in the instant set of circumstances.

The attempt here being made is in fact one seeking a higher rate of pay under the claim of alleged violation of rules. An award sustaining such claim, therefore, would amount to rate making rather than rules interpretation. The claim should be denied.

All evidence and data have been considered by the parties.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts involved in this claim are not in dispute.

Prior to February 1, 1949, the Rock Island Railroad operated trains 45-50 in straight away service between Memphis, Tennessee, and Hot Springs, Arkansas, and return.

The Railway Express Agency, Incorporated, assigned two messengers to trains 45-50, working alternate days, with monly pay at the rate of \$283.10.

Effective February 1, 1949, trains 45-50 were discontinued. The Railroad rearranged schedules of its trains 111-112 and 51-52, operating between Memphis, Tennessee, and Shawnee, Oklahoma.

The Railroad established new trains, 151-152, operating between Little Rock and Hot Springs, Arkansas, a distance of sixty miles. This was turn-around service, under Rule 66. The Agency protected trains 151-152 with one messenger, at a monthly rate of pay of \$263.10. The rate of pay was established in accordance with Rule 82, "New Positions."

Claimants contend that, under the present set-up of trains, the express is still handled as through service from Memphis, Tennessee, to Hot Springs, Arkansas, and return, and that a messenger assigned to trains 151-152 was not "New Positions" coming within Rule 82 (c), and therefore the claimants should be paid at the monthly rate of \$283.10.

It is to be noted that the Railroad, in rearranging train service, February 1, 1949, abolished straight away service from Memphis, Tennessee, to Hot Springs, Arkansas, when trains 45-50 were discontinued.

Freight originating at Memphis for shipment to Hot Springs, Arkansas, and vice versa, after February 1, 1949, would be shipped on trains 51-52, which operated from Memphis, Tennessee, to Shawnee, Oklahoma. The freight would be put off at Little Rock, Arkansas, and transferred to trains 151-152, operating from Little Rock to Hot Springs and return. The Agency had nothing to do with the rearrangement of the train service and had no control over it. Prior to February 1, 1949, it was not necessary to transfer express shipments. Effective February 1, 1949, there was no through service to Hot Springs, and all express, mail, and passengers had to transfer at Little Rock for Hot Springs.

We cannot, under the facts, say that the express shipments were being shipped in "through service." The Agency was forced to assign a messenger to the "turn around service" on trains 151-152. This was a new position, and therefore brought into effect Rule 82 (c). The monthly rate of pay of \$263.10 was properly established for the messenger, since it was taken from "positions of similar kind or class within the jurisdiction of the Superintendent." The rate of pay of \$263.10 put in effect was the same as that paid messengers of the Missouri Pacific Railroad operating between Little Rock and Hot Springs, Arkansas, a distance of 53.6 miles in "turn around service."

The messenger assigned to trains 151-152 was a new position. It was not a rearrangement of positions, nor was the express from Memphis, Tennessee, to Hot Springs, Arkansas, being shipped in through service.

The Agency properly applied the Rules to the Agreement.

**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

The Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1953.