

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, 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, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated in the calculation of earnings due Messenger Dean Dillon for the month of January 1949; and

(b) He shall not be credited with and compensated, in accordance with agreement rules, for continuous time from his scheduled reporting time at Edgemont for Train 43 at 10:10 A. M. January 3, 1949, up to the time of its departure January 11; from 10:10 A.M. until notified to report at 12:50 P. M., January 19, 1949, from 10:10 A. M. until notified to report at 5:10 P. M., January 25, 1949; and from 10:10 A. M. until notified to report at 7:00 P. M., January 30, 1949.

EMPLOYEES' STATEMENT OF FACTS: Dean Dillon, with a seniority date of January 31, 1916, is one of a pool of three messengers assigned to operate on Chicago, Burlington and Quincy Railroad Trains 42 and 43 Billings, Montana-Edgemont, South Dakota, Route. Salary \$283.10 basic per month. His schedule for the month of January 1949 was 176 hours. He was scheduled to operate:

Report at Billings for Train 42 at 7:30 A. M. — Depart at 8:00 A. M.
Released at 6:40 P. M.

Report at Edgemont for Train 43 at 10:10 A. M. Depart at 10:30 A.M.
Released at 9:00 P. M.

Copy of Bulletin No. 60 dated September 30, 1948, revealing this scheduled operation is attached. (Exhibit A.)

Dillon reported at Billings, his home terminal, for his run on Train 42 and was signed on duty at 7:30 A. M., January 2, 1949. He was released at Edgemont at 6:40 P. M. on the same date. He reported at Edgemont, his away-from-home terminal, for his run on Train 43, and was signed on duty at 10:10 A.M. January 3, 1949. It developed that Train 43 was late but there was no indication that it would be annulled. This did not occur until late

Messenger Dillon by reason of submitting bill for expenses because of such interruption of service recognized that he was relieved from duty. Otherwise, no authority exists for reimbursement for expenses incurred because of interruption of service. Rule 69 reads:

"Relief Account Delay—Rule 69. Train service employes delayed en route may be relieved from duty. If relieved, instructions will be given to proceed to terminal where services are next required and all time will continue to accumulate until arrival at such designated terminal.

If train employe involved is caused expense because of such interruption of service, he shall be reimbursed when his bill for same is submitted and verified."

The second paragraph of Rule 69 above quoted was added to the rule effective June 1, 1927. Previous thereto and going back to the first Agreement effective February 15, 1920, the Relief Account Delay Rule consisted of the first paragraph only of the above quotation. The effect of the addition of the second paragraph was to recognize legitimate expenses incurred by train service employes in instances such as we have here where they are relieved from duty and not under pay because of storms, wrecks, etc., preventing them from continuing their assigned duties.

Messenger Dillon was delayed en route because of interruption of service. Admittedly, he was inconvenienced, but for reasons beyond the control of the Carrier. He was, however, credited for the month of January 1949, for all time actually worked, for trips missed and not worked, and made whole for expenses incurred at Edgemont while not on duty. There was no duty to be performed from 10:10 A.M., January 3, 1949, until the afternoon of January 11, 1949, when he returned to Billings on the first train operated out of Edgemont.

The claim in the instant case is for time released from service where the employe was made whole for the month in which the interruption occurred, including expenses. A similar claim for continuous time at Havre, Montana, from 7:25 P.M., December 17, 1948, to 8:15 A.M., December 18, 1948, in favor of train service employes Sampson and Slater, Spokane-Whitefish Route, was recently decided by the Board in Award 5753. Referee Angus Munro in denying the claim of the Employees stated:

"Petitioner describes the 7:25 P.M. act on the part of the Carrier in one instance as a 'release' and in another as 'relieved', whatever one calls it the fact is subsequent to such time and until 8:15 A.M. they were not in Carrier's service. Time by itself means nothing, when it can be used as a claim for money it has a meaning. 'All time' which can be used in a claim means service time. This is shown by the fact that for any monetary loss sustained by claimants when not in service or on duty they were reimbursed by the Carrier."

That dispute was brought under Rule 69 as is the instant case. Referee Munro's language leaves no doubt that the connotation "time" means "service" when related to a money claim.

Carrier asserts that the issue in the instant case was definitely and effectively laid at rest in the first case involving interpretation of Rule 69 since the rule became effective June 1, 1927 when Award 5753 was rendered. The claim in the instant case is entirely without merit and should be denied.

All evidence and data set forth have been considered by the parties in correspondence and conference. (Exhibits not reproduced.)

OPINION OF BOARD: This claim as presented is divided into four (4) separate and distinct sections, by Express Messenger Dean Dillon, all occur-

ring during the month of January 1949, and are as follows, for compensation due the employee:

(a) For continuous time from his scheduled reporting time at Edgemont for Train #43, at 10:10 A.M. January 3, 1949 up to the time of its departure January 11, 1949.

(b) For compensation for continuous time from 10:00 A.M. until notified to report at 12:50 P.M. January 19, 1949.

(c) For compensation for continuous time from 10:10 a.m. until notified to report at 5:10 P.M. January 25, 1949.

(d) For continuous time from 10:10 A.M. until notified to report at 7:00 P.M. January 30, 1949.

The record discloses that as to claim (a) the employee Dillon, a regularly assigned employee, with home terminal at Billings, Montana, arrived at Edgemont and was released from duty 6:40 P.M. January 2, 1949.

On January 3, 1949, the employee reported at his regular time 10:10 A.M. and was signed for duty by the Railroad Operator. He was notified at the time that Train #43 was indefinitely late, and due to blizzard conditions the train was annulled, later the same day, and did not again operate until the afternoon of January 11, 1949. The employee returned to Billings, his home terminal, and was released from duty 7:40 A.M. January 12, 1949. The Organization contends that for this continuous service the employee should be compensated, as provided by paragraph 2, Rule 65, as follows:

"Train service employees in regular assignment shall receive credit for not less than the scheduled hours for each trip. A trip is defined as service beginning with time required to report for duty until released at bulletin terminal. Except as provided in Rule 69, all time shall be counted as continuous from the time required to report for duty until released at bulletin terminal."

RULE 69—RELIEF ACCOUNT DELAY

"Train service employees delayed enroute may be relieved from duty. If relieved, instructions will be given to proceed to terminal where services are next required and all time will continue to accumulate until arrival at such designated terminal.

"If train employee involved is caused expense because of such interruption of service, he shall be reimbursed when his bill for same is submitted and verified."

Carrier contends that it made no salary deductions from the employee during the unexpected layover at Edgemont, but paid his full salary during this interval, and in addition paid necessary expenses. Carrier relies on Rule #69 of the Current Agreement, as quoted above, and Also Award #5753 of this Division, and takes the position Carrier has in no way violated the Agreement. The award cited is not similar to the matter before us for the reason that case involves a statement of facts whereby the employees, as Express Messenger reported for duty in Spokane at their scheduled reporting time. During the course of their run, and account of a freight wreck, their train was necessarily detoured over another carrier, and arrived on their own main line at Harve, Montana, a distance of 256 miles east of their outer terminal, which was Whitefish, Montana. On arrival at Harve, the employees were released from duty and instructed to proceed to Whitefish, their outer terminal where their services were next required. We are in full accord with the award as cited, but in that claim before the Board, the employees were relieved from duty, and the claims were denied and properly so. In the claim before us, the record shows, and without dispute by Carrier, that the employee was not relieved from duty, nor was he given instructions to proceed to terminal where services were next required.

The Board is of the opinion that the employee in the claim before us was in continuous service. He was not relieved in accordance with the provisions of Rule 65, paragraph 2, nor was he given instructions to proceed to terminal where services were next required. Therefore carrier has violated the agreement as above stated, and claimant is entitled to a sustaining award for the full time he was on continuous duty, including overtime, less any amounts paid by carrier as developed by carrier's records for compensation during the period alleged.

This Board has no authority to change the rules negotiated between the parties. They are made and agreed upon as a result of collective bargaining, and the responsibility is on the Carrier to conform to and apply the rules as they are written and as agreed upon by the parties. See Award #3590.

As to Claims (b) and (d) the Organization relies on Rule #70 of the current agreement. This is the "Reporting and not Used" rule, which provides the employee shall be paid from the time of first reporting, shall constitute a call, and shall be paid in accordance with Rule "47" of Article V which rule we do not deem it necessary to quote here.

The Board is of the opinion claims (b) and (d) should be sustained.

Claim (c) is for time alleged to be due the employee on January 25, 1949, a scheduled layover day at Edgemont. On January 23, 1949, his train did not arrive in Edgemont in time to protect his turn. On January 24 his assigned train did not operate, and on January 25th he was notified **not** to report for his scheduled return trip, but was later the same day, called to report at 5:10 P.M. and signed in at that time. The Organization relies on the provisions of Rule #75--Regular Train Service Employees Working During Lay-Over Period. Carrier allowed compensation to the employee as provided by Rule #75, but the Organization contends he should have been allowed time from his scheduled reporting time 10:10 A.M. to 5:10 P.M. the time he was notified to report, as provided in Rule 75 (c). The Board is of the opinion Carrier properly complied with Rule #75, and allowed pay for his lay-over day, but we hold that Carrier did not allow compensation as claimed, and we adopt the conclusions as reached in claims (b) and (d) and hold the employee should be paid compensation from time he reported for duty at 10:10 A.M. of the day in question.

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 has violated the terms of the current agreement.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1953.