

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Emmett Ferguson, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that

(a) The Carrier violated the current Clerks' Agreement Rule 1, when in July 1951, without conference, negotiation or agreement, it abolished four Messenger positions and assigned the performance of their duties to Group 1 Clerical employees, Yardmasters, Terminal Trainmasters, Porters, Red Caps, Bus Drivers and other employees who have no Agreement rights to such work.

(b) The four Messenger positions be restored and their work returned to them, including the exclusive operation of the Pneumatic tube system.

(c) And that the regular, relief and extra Messengers, i.e., J. H. Watson, Hal Edmonds, Eugene Nipper and Charlie West the regular assigned and relief Messenger including extra Messengers who have Agreement rights to the work in question be compensated at the rate of \$10.86 per day as of the dates these positions were abolished, i.e., July 2 and/or July 3, 1951, plus any cost-of-living or escalator clause adjustment for each day they would have worked one of these positions had such position not been abolished in violation of the Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** As the result of the installation of pneumatic tubes between various offices in the Terminal, John Sevier, Telegraph and Ticket Office at Knoxville, Tennessee, for the purpose of transporting messages, waybills, orders, etc., between the various offices, all Messenger positions at John Sevier, three regular and one relief position and one Messenger position at City Yard were abolished by Bulletin No. 2 dated June 29, 1951, effective with termination of assignment on July 2, for 1st, 2nd and relief position and on July 3 for 3rd trick position. The Bulletin was issued by Mr. J. W. Huckaby, Superintendent Terminals. The work formerly performed by and required of the Messengers whose positions were abolished is now being required of Clerks, Porters, Red Caps, Bus Drivers and other employees who have no Agreement rights to such

Also paragraph (a) (3) of Section 506 of Title V of the Communications Act of 1934, as amended, makes it unlawful "to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee."

While, technically, these laws do not apply in the railroad industry, they are significant because the Brotherhood is here attempting to cause the carrier to pay or deliver or agree to pay or deliver money, in the nature of an exaction, for services which were not performed or not to be performed.

Under the circumstances, the monetary payment here demanded cannot be awarded.

### CONCLUSION

Carrier respectfully submits that:

(a) The effective clerical agreement has not been violated. There was no obligation to confer or negotiate with employes or their representatives before abolishment of the five messenger assignments here involved was made effective, it being recognized in agreement rules that there is no restriction on the abolishment of assignments or positions, particularly those which are no longer necessary.

(b) Work formerly assigned to and performed by occupants of the five messenger assignments here involved has not been assigned to or performed by yardmasters, terminal trainmasters, porters, red caps, bus drivers and others in contravention of the terms of the effective agreement. Such agreement does not confer upon any employe or group of employes monopolistic rights to performance of any work, nor does it require any separation of work. This fact is recognized not only in Rule 2 but in other rules and precedents as well.

(c) Operation or servicing of the pneumatic tube system at John Sevier has never been assigned to messengers. They have no valid claim to such work. Furthermore, such work is incident to the work of clerical forces. To assign such work to messengers as here contended would constitute establishment of a make work or featherbedding arrangement. It would also be a step backwards. It was denied messengers in the interpretation of Award 3746.

(d) The new rule or working condition here sought to be established by the Brotherhood cannot be granted by the Board as it lacks authority to do so. The penalty money payment here demanded cannot be awarded for the same reason.

Claim being wholly without merit and unsupported by any provision contained within the four corners of the effective clerical bargaining agreement here in evidence should be denied and Carrier respectfully requests the Board to so hold.

All relevant facts and arguments in this dispute have been made known to employe representatives.

(Exhibits not reproduced).

**OPINION OF BOARD:** It is claimed here that (a) the Carrier violated the agreement in abolishing messenger positions and assigning their duties to others outside the messenger seniority district. (b) That the positions be restored including the exclusive operation of the pneumatic tube system and (c) that the messengers affected be compensated at \$10.86 per day for each day they would have worked had the positions not been abolished.

There is general agreement on the facts and some agreement between the parties in their arguments. As to the facts, it is shown that shortly after the tubes were installed the messenger positions were abolished, and since then clerks and others have completed the handling of matters sent and received through the tubes. The Organization contends that such activity consumes hours of each clerks time, and the Carrier says that the time consumed is in minutes. We cannot reconcile this conflicting detail, nor can we determine whether a messenger, rated as such, and who has been using a truck for his rounds, is entitled to continue such use under the circumstances shown, as argued by the Organization.

Both parties cite Award 3746 and in the argument of the case it was generally agreed that improvements in methods are permissible by the Carrier even though jobs may be eliminated as a result. But that if part of the work of the position remains it must be handled within any limitations of the governing agreement.

We support the conclusions of Award 3746 and the subsequent interpretation thereof (Serial No. 75). By the installation of the tubes the work of the messenger positions was materially reduced. In fact all the leg work between the points served by the tubes has been eliminated. As to additional leg work or the messengers' other duties which remained, the Carrier violates the agreement when it assigns such remaining duties outside the seniority district of the messengers. Hence Claim (a) should be sustained.

As to Claim (b) we are of the opinion that the nature and extent of such duties is so complex that we are not able to say when, and where, and for how long, a messenger or messengers should be assigned. On this feature, this claim should be remanded to the property for a determination of the amount of messenger work remaining and for negotiation between the parties and agreement on the assignments necessary to conform to this award.

In line with the interpretation cited, we find that exclusive operation of the pneumatic tube system is not assigned to messengers. Consequently we sustain part of Claim (b) and remand it to the parties for further handling consistent with this opinion but we do not declare that the messengers are entitled to the exclusive operation of the pneumatic tube system.

As to Claim (c), the monetary claim for time lost, we are of the opinion when the Carrier and Organization put the assignments into effect in conformity with this award, it will be determined how many messengers have been wrongfully deprived of work and to that extent, the claimants or those who under the agreement are entitled thereto, are allowed compensation since July 2, 1951 at their regular rate for the number of positions so established.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 agreement to an undetermined extent.

That the claim should be remanded to the parties.

**AWARD**

Claim sustained in part as per Opinion and Findings and remanded to the parties for further handling in conformity with this Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

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

Dated at Chicago, Illinois, this 15th day of January, 1954.

**DISSENT TO AWARD 6448, DOCKET CL-6552**

Petitioner had the burden of proving by probative evidence that claim was valid. It failed to meet that burden and, consequently, the claim should have been denied.

We, therefore, dissent.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ W. H. Castle

/s/ J. E. Kemp