

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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 September 1, 1949, was violated at the Los Angeles, Calif. Agency operations October 1, 1950, when two positions titled General Foreman, excepted from agreement coverage, were created in the Vehicle Department with duties and responsibilities assigned to the occupants thereof coming under the scope and operation of the agreement; and

(b) The positions shall now be brought under agreement coverage, bulletined and assigned and employees G. W. Burns and George Dorr, et al adversely affected, compensated for the difference in salary loss retroactive to and including October 1, 1950.

EMPLOYES STATEMENT OF FACTS: Prior to World War II the Vehicle Department at the Los Angeles, Calif. operations consisted of a Vehicle Supervisor and a Chief Clerk, excepted from agreement coverage. Five Vehicle Inspectors rated at \$288.92 basic per month as of October 1, 1950, whose duties and responsibilities were those of instructing new drivers; supervising the activities of drivers; checking drivers performance cards; making tailgate checks; setting up delivery and pickup routes; conducting meetings with drivers; contacting the public as representative of the Agency; and have more than average capacity to handle all phases of vehicle accidents. There was also a position titled Chief Dispatcher rated at \$274.04 basic per month as of October 1, 1950, with duties consisting of assigning drivers, filling vacancies on vehicle positions and keeping up route schedules. These positions of Vehicle Inspector and Chief Dispatcher came under the scope and operation of the agreement. Copies of Bulletin No. 91 advertising position of Vehicle Inspector and Bulletin No. 59 advertising position of Chief Dispatcher are attached, identified respectively as Exhibits A and B.

During the war two positions of General Foreman were created, excepted from agreement coverage. The duties of the incumbent of one of

supervision performed by classified subordinate supervisory employes, but the General Foremen's activities in that connection are in the nature of surveying operations to plan for better performance, instruction, tests to determine employe's knowledge of their work and how it is being performed, all essential matters within the scope of any excepted supervisor charged with the supervision of a vehicle operation of the proportion of that obtaining in the City of Los Angeles.

Employees have completely failed to establish that the duties of the positions of General Foremen at Los Angeles possess that degree and extent of routine duties sufficient to bring them within the scope and operation of the Agreement. See also Decisions E-1549 and E-1616. Copies of all decisions relied upon by Carrier are attached for convenience. Under the facts and precedent decisions cited a denial award is in order.

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

OPINION OF BOARD: Under Rule 1 (c) positions of General Foreman are excepted from the agreement if they exercise their supervision through subordinate supervisory employes for six hours of their tour of duty. The Carrier states that the two General Foremen involved in this claim exercise their supervision through seven subordinate supervisory employes for their entire tour of duty. That statement is not specifically refuted but it is alleged that they exercise some direct supervision of the type exercised by Vehicle Inspectors. Such action is not improper unless they so act in excess of the time permissible under the Rule.

On the evidence presented we are unable to say that they do not exercise their supervision through subordinate supervisory employes for at least six hours each day so the claim must fail in accordance with the criterion established by the Rule for determining whether the position is excepted from the agreement.

The fact that some evidence indicates that these General Foremen have at times performed work of a character and in a manner which might constitute a violation of Note 1 to Rule 1 does not justify the relief requested in view of the foregoing.

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 agreement was not violated as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.