

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey—Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that—

(a) The Carrier is violating the Clerks' Agreement at Houston, Texas, when it requires or permits persons not covered by the Clerks' Agreement to perform work as Bus Messengers. Also

(b) Claim that the senior available employe entitled to the work under the Clerks' Agreement be allowed a "call" in each instance where this work is performed by a person not covered by the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: The Houston Belt and Terminal Railway Company has, or had at the time this claim arose, four (4) regularly assigned positions designated as Bus Messengers and two relief positions to perform rest day relief work.

The four (4) regular positions are shown below—

POSITION	ASSIGNED HOURS	REST DAYS
Bus Messenger No. 261	8 A. M.— 4 P. M.	Sun.—Mon.
Bus Messenger No. 262	4 P. M.— 12 Mn.	Tues.—Wed.
Bus Messenger No. 263	11 P. M.— 7 A. M.	Mon.—Tues.
Bus Messenger No. 264	12 Mn. — 8 A. M.	Wed.—Thurs.

The foregoing positions are all filled seven (7) days each week.

The duties of the Bus Messengers are to drive, or operate, the two buses which have a capacity of sixteen passengers.

In addition to the passengers, mail, messages and waybills are transported on these buses.

The four regular and two relief positions are now, and have been ever since they were created, filled by employes holding seniority rights and working under the Clerks' Agreement.

these awards are: 72, 213, 1125, 1289, 1435, 2137, 2436, 3136, 3430, 3503, 3603, 3727, 4050, 4086, 4103, 4129, 4208, 4281, 4312, and 4383.

We have previously commented upon the vague and indefinite phrasing of the Employees' Statement of Claim, in that it fails to state any specific instance, date or dates, when the alleged violations are supposed to be entitled to the payment of a "call" as set forth in paragraph (b) thereof.

In the past, your Board has declined to recognize claims so vaguely and indefinitely presented. For instance: In Third Division Award 4305, which included in the statement of claim, a claim for "other similarly affected employees" your Board stated:

"The Claims for 'other similarly affected employees' must be denied. The only claims properly before the Board for its consideration are those of named parties for specified dates and locations."

And in Award 5375 in which paragraph (d) of the Statement of Claim included:

"All other employees who may have been adversely affected * * *," your Board stated: "Paragraph (d) of the claim is denied for reason of indefiniteness."

In Award 6101 which in addition to naming certain individuals the Statement of Claim included:

"Any other Clerks who may have filled these positions since November 12, 1948." Your Board stated: "This claim is ordinate, and the claim will be allowed for only the named claimants."

Also, Award 6290, has this to say:

"It is the opinion of this Board that the only employees to be considered as proper claimants are those named in Employees' ex parte submission. 'All other employees,' is non-descriptive, too vague, indefinite and uncertain and such claims should be dismissed for reasons as stated."

When consideration is given to all the facts and circumstances involved in this controversy as set forth in the foregoing submission, it is the position of Carrier that the claim here presented to your Board is, in addition to being vague and indefinite, without merit, justification or basis, and it should, therefore be denied.

The substance of matters contained herein have been the subject of correspondence and/or conference between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Rules of Agreement at issue in this docket expressly recognize messenger positions as within scope of the Agreement. Bus driver or chauffeur positions are not so recognized. The proof shows that much of the Carrier's automotive equipment is used by crafts other than messengers and that various modes and means of travel are used by and for transportation of employees. It may be reasoned, also, that operation of equipment by messengers is, in some measure, an incident to and provides a means or method for carrying out a messenger's duties.

When the Carrier did, however, on or about June 1, 1950, require of messengers that they take on additional duties of transporting crews and others in Carrier-owned buses to, from, and between designated points, the effect thereof was to make the advertised and required work subject to and, in its limited scope, a part of the Agreement.

It is held, therefore, that when Company-owned buses are used for transporting crews, to and from various yard offices, connecting lines, superintendent's office, local office, and roundhouse, as per Carrier bulletins and when other bus service is operated by the Carrier as per notice to supplement and augment public transportation, messengers shall be used.

This is not to hold, however, that one or more Carrier-owned motor buses may not be used and operated by other than messengers for other purposes and at different points on the Carrier's property not specified in the notice and bulletin aforesaid.

On dates when roundhouse laborers were used in conflict herewith, a messenger was entitled to be used or called in accordance with the Agreement on the property and to be paid accordingly.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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

The Agreement was violated to the extent and in the manner only as shown by the Opinion.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.