

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 & Steamship Clerks, Freight Handlers, Express & Station Employes, effective September 1, 1949, was violated in the Mississippi Division (Memphis, Tennessee Terminal), March 11, 1952, when Carrier allegedly abolished a pool of six (6) Messengers' positions adversely affecting the earnings of J. B. Ashley for that month; and

(b) He shall now be compensated for round trip, Memphis, Tennessee-New Orleans, Louisiana Route in the amount of \$56.81, or he shall now be credited with the scheduled hours covering a round trip as Messenger on Illinois Central Railroad Trains 15-16, Memphis, Tennessee-St. Louis, Missouri Route, the same as if he had actually worked the run on March 11-12-13, 1952 and compensated for his full salary together with the ratable proportion of overtime, if any accrued on his schedule for that month.

EMPLOYEES' STATEMENT OF FACTS: J. B. Ashley, with a seniority date on the Mississippi Division Train Service Seniority District of January 15, 1914, is one of a pool of six (6) messengers regularly assigned to operate on Illinois Central Railroad Trains 15-16 and 23-24, Memphis, Tennessee-St. Louis, Missouri-Greenville, Mississippi Route, salary \$326.45 basic per month, scheduled to operate as follows:

First day, report Memphis, Train 16, 10:05 P. M.
Second day, arrive St. Louis, Train 16, 8:05 A. M.
Second day, report St. Louis, Train 15, 9:15 P. M.
Third day, arrive Memphis, Train 15, 7:30 A. M.
Fourth day, report Memphis, Train 23, 8:00 A. M.
Fourth day, arrive Greenville, Train 23, 2:00 P. M., no release
Fourth day, report Greenville, Train 24, 2:30 P. M.
Fourth day, arrive Memphis, Train 24, 7:15 P. M.
Fifth day, Lay-over
Sixth day, Lay-over
Seventh day, repeat above schedule

period of time would have to be allowed to run out before the job from any standpoint of reasoning could be regarded as abolished, no longer in existence." (Emphasis supplied)

That is the position of the Carrier in the instant case, that Messenger Ashley was not entitled to exercise displacement rights prior to the effective date of the notice of abolishment of his position, and that there is nothing in the Agreement which permits any employee to exercise displacement rights during the seventy-two hour notice of abolishment of his position required by Rule 19.

Mr. Wright further cites Decision E-1513 of Express Board of Adjustment No. 1 in support of his theory that Messenger Ashley should have been permitted to exercise displacement rights prior to the running out of the seventy-two hour notice. That Decision bears no analogy to the instant set of circumstances. In the instance covered by that Decision complainant Kokott's position was not abolished, rather he was displaced by a senior employe on February 12, 1945. Under Rule 19 he had five days in turn in which to displace a junior employe. On the fourth day, February 16, 1945, he advised by letter his desire to displace a junior employe on the following day, February 17, 1945, but was not permitted to do so until February 19, 1945, which action the Referee held was wrong, so long as the employe asserted such displacement within the five-day period following his displacement.

Employees have failed to support their claim that Agreement rules were violated in the abolishment of the Memphis-St. Louis-Greenville Route, effective March 14, 1952, under the notice of March 10, 1952, or that Messenger Ashley was adversely affected by reason of not being permitted to exercise his seniority during the seventy-two hour notice provided by Rule 19. A denial of the claim is in order under the rules, facts of record, and holding of Referee Munro cited by Carrier.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant here was one member of a pool of six express messengers holding regular assignments on runs going from Memphis to St. Louis to Greenville, over Illinois Central Lines.

Under date of March 10, 1952, the respondent here posted notice that effective March 14, 1952, all messenger service positions on Illinois Central Trains 16-15-23-24 were being abolished. This bulletin came into being as the result of a work stoppage by operating crafts at St. Louis.

At the time of the posting of the aforesaid notice the claimant was in Memphis, being next due out on March 11, 1952, on Train 16, with a reporting time of 10:05 P. M. and departure time of 11:00 P. M.

Claim is here made on an alternative basis that the named employe (J. B. Ashley) be (1) compensated for round trip Memphis to New Orleans route in the amount of \$56.81; or (2) credited with the scheduled hours of a round trip as messenger on Illinois Central Trains 15-16, Memphis to St. Louis route the same as though he had worked the run, together with all overtime, if any, that accrued to his schedule for the month in question.

Under date of March 12, 1952, the notice abolishing the claimant's position was followed by a second notice, which stated that due to a resumption of service the claimant was to protect his next regular assignment.

It is alleged that this claim is valid for the reason that (a) claimant was not permitted to displace junior messenger H. M. Blair on Trains 25-26, Memphis to New Orleans, departure time 9:00 P. M. March 11, 1952,

or two hours later than the departure time of his regular run on Train 16; and/or (b) not permitting or advising the claimant to deadhead to St. Louis and work the St. Louis to Memphis position of the scheduled run.

In support of this claim the petitioner relies on Rules 19, 24 and 65, and on earlier decisions of the Railway Express System Board of Adjustment.

The respondent likewise relies on Rule 19 and a decision of the aforementioned System Board of Adjustment.

Rule 19, in substance, provides that at least 72 hours' notice be given in all cases of reduction of forces and makes provision for the exercise of seniority by those so affected. Rule 24 substantially reinforces this right.

The carrier, in support of its contention that it properly denied Claimant Ashley's request to displace Junior Messenger Blair on Trains 25-26, Memphis to New Orleans, contends that he (Ashley) was not in the status of an employe whose position had been abolished within the meaning of Rule 19 and Express Board Decision E-1605.

Thus we are confronted squarely with the question of whether or not, under the facts of record here, the claimant's rights to exercise his seniority rights became effective at the instant the abolishment notice was posted, or at the expiration of the 72-hour provision of Rule 19, as supplemented by Rule 24.

While Decision E-1605 above-mentioned concerned station employes under circumstances where there were no existent positions subject to bidding under the seniority provisions of the agreement, and while we are here interpreting and applying rules applicable to train service employes, we are of the opinion that the 72-hour provision in Rule 19 precluded the claimant from exercising displacement rights. He, in effect, remained on his position until the expiration of the 72-hour period. The carrier's notice of abolishment dated March 10, 1952, under its terms was clearly effective as of March 14, 1952. Claimant's displacement rights became operative only after the expiration of that date.

Having found that part (a) of the confronting claim is without merit, we proceed to examine part (b).

Under date of March 12, 1952, the respondent revoked its notice of March 10, 1952 (and effective in so far as the claimant was concerned on March 14, 1952), said last mentioned notice advising the claimant to protect his next regular assignment.

Respondent asserts that it did not have "official notice" that this work stoppage had ceased and that service had resumed; that Rule 65 only provides for payment for available work and has no application where a run is annulled account of a strike beyond the control of the respondent.

The second notice above pertained to the St. Louis-Memphis portion of the claimant's bulletined run. While it had been annulled by the first notice, it was restored by the second, and all rights under the effective agreement accruing to the claimant became instantly effective and operative.

It was then the right of the claimant to have applied, and the duty of the respondent to effectuate, all of the terms of the agreement.

We cannot agree with respondent's contention that they were not, under the prevailing circumstances, aware of the restoration of service. The prime carrier was aware of it. They deadheaded a crew member to St. Louis. The claimant might likewise have so done.

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

The agreement was violated to the extent shown in the above Opinion.

AWARD

Claim (b) sustained to the extent of the scheduled hours covering a round trip on Illinois Central Trains 15-16, Memphis, Tennessee-St. Louis, Missouri, route.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.