Award No. 7355
Docket No. CLX-7291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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 Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949 was violated June 4, 1950 when work in the Nebraska Wyoming Train Service Employes Seniority District No. 4 was arbitrarily transferred to the Southern Minnesota-South Dakota Division Train Service Employes' Seniority District;

(b) The work shall now be restored, bulletined and assigned to employes of the Nebraska-Wyoming Train Service Employes' District No. 4; and

(c) All employes adversely affected shall be compensated for salary loss sustained, retroactive to and including June 4, 1950.

EMPLOYES' STATEMENT OF FACTS: Prior to June 4, 1950 there was a pool of three Messengers in the Nebraska-Wyoming Train Service Employes' Seniority District No. 4 assigned to operate on Chicago and Northwestern Railway Trains 204-203-202 and Chicago, St. Paul, Minneapolis and Omaha Train 9, Omaha, Nebraska-Sioux City, Iowa Route, Group No. 3, salary $287.50 basic per month. A copy of Bulletin No. 17, dated March 11, 1950 is attached. (Exhibit "A") There was also a pool of four Messengers from the Southern Minnesota-South Dakota Division Train Service Employes' Seniority District assigned to operate on Chicago and Northwestern Railway Trains 201 and 210, Minneapolis, Minnesota-Omaha, Nebraska Route, salary $295.00 basic per month. A copy of Bulletin 1026, dated March 13, 1950, is attached. (Exhibit "B")

June 1, 1950 a notice was posted advising that effective with the discontinuance of CStPM&O Trains 9 and 10, June 4, 1950 the pool of three messengers assigned to operate on C&NW Trains 204-203-202 and CStPM&O Train 9 was abolished (Exhibit "C") and in lieu thereof, effective June 4, 1950, one position was established, assigned to operate on C&NW Trains 204 and 203, Omaha, Nebraska-Sioux City, Iowa Route, salary $287.50 basic per month was established by Notice No. 33 dated June 1, 1950. (Exhibit "D")

June 3, 1950 Bulletin 1074 was posted in the Southern Minnesota-South Dakota Division Train Service Employes' Seniority District establishing one

on the Kansas City-Lincoln trains formerly was covered by the Kansas City-district pool. Although in part by changed route this was still the Kansas City-Lincoln train; the car which had previously housed the work and the equipment previously used continued through from Kansas City to Lincoln as before, except via the new route at the northern end of the run; the major part of both of the route and the service remained identical; therefore, we think the run properly remained within the Kansas City-Northern Kansas Seniority District, as determined by Carrier."

Under the precedent decisions and award cited it follows that there was no transfer of work from the Nebraska-Wyoming District employes to employes of the Southern Minnesota-North Dakota District, but only an abolishment of service on certain trains in the former district with consequent diversion of traffic to trains in the Southern Minnesota-South Dakota Division, which trains housed the Messengers and the work in the Southern Minnesota-South Dakota District, and which situation was characterized by Referee Wolfe in Decision E-1253 thus:

"This was not a 'transfer of work' but merely the diversion of traffic from one train to another, which may be done regardless of seniority districts."

and by Referee Stone in Award 6233:

"We find resulting from this rerouting no change in definite limits of a seniority district involving Rule 5 and no transferring of position or work involving a position in violation of Rule 22."

Employes have completely failed to support their claim that work in the Nebraska-Wyoming Seniority District was arbitrarily transferred to the Southern Minnesota-South Dakota Seniority District, or that this work shall now be restored to employes of the Nebraska-Wyoming District under the facts, rules, or precedent decisions of the Express Board of Adjustment and this Board denying similar claims. 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 in conference.

(Exhibits not reproduced).

OPINION OF BOARD: The record on this claim presents a long and detailed statement of facts. A resume of the same will not be reproduced herein. The main question for our consideration is the application of Rules 5 and 22 of the Agreement as the same apply to the facts. Other rules are cited and discussed by the parties in presenting their respective positions; however, as stated the rules referred to by number are those which control the general situation created by the facts.

Of the cited awards in the presentation of the evidence and arguments thereon we consider the most important to be Award 6233, likewise of importance is the conclusion reached in Decision E-1253 discussing bi-partisan Decision 989 of Board of Adjustment No. 1.

It is contended by Petitioner that Award 6233 is not controlling in the instant case and with this conclusion we do not agree. The general situation as it applies to similar facts was discussed at length in that award and the contentions of the Organization with respect to the application of the rules as cited here were rejected in a denial award. Certainly it cannot be said on this record that Carrier did not endeavor to compose the differences as between the representatives of the employes in the two seniority districts involved. Also the operation of rules governing conference and agreement cannot be said to contemplate prolonged delay to an extent which would interfere with

the business at hand of Carrier by a failure to adjust a jurisdictional dispute. Here, over a period of months, offers, counterproposals and conferences failed to resolve the dispute. The record shows offers made and, after delays of considerable length, accepted only to have the original offer withdrawn with a result that the differences were never resolved.

We reaffirm the holding in Award 6233.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.