

Award No. 8161
Docket No. CL-7720

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY (Gulf District)

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

(a) The Carrier violated the Clerks' Agreement beginning September 13, 1953 when it reduced the assignment of Messenger position at Kingsville, Texas, from seven (7) to five (5) days per week and had the Messenger's work performed by persons not covered by the Clerks' Agreement on Saturdays, Sundays and holidays. Also

(b) Claim that the Carrier be required to correct the violation, and that the occupant of the Messenger position be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: *For many years prior to September 13, 1953 the Messenger position at Kingsville was assigned, filled and worked seven (7) days each week by an employee covered by the Clerks' Agreement.*

Effective September 1, 1949 the position was assigned Wednesday and Thursday as rest days. These rest days were subsequently changed to Thursday and Friday.

On the assigned rest days the position was worked by a regularly assigned relief employee. This arrangement continued from September 1, 1949 up to and including September 12, 1953.

Effective September 13, 1953 the assignment was reduced to five days per week, and the Messenger's work on Saturdays, Sundays and holidays was assigned to persons not covered by the Clerks' Agreement.

POSITION OF EMPLOYEES: The facts in this case are not in dispute. Prior to September 13, 1953 an employee holding rights and working under the Clerks' Agreement performed the Messenger's work seven days each week.

Since September 13, 1953 an employee holding rights and working under the Clerks' Agreement performs this work Monday through Friday, excluding

It may be true, and probably is, that on occasion some one who might be expecting a communication may call at the office to see if there is anything for him; however, this is also true on the days the messenger is on duty. The fact remains, though, that the telegraphers are performing no "messenger" service on the days the messenger is not on duty; nor is there any necessity or occasion for them to do so.

Contrary to the contention of the Employees there has been no violation of either the Telegraphers' Agreement or the Clerks' Agreement by reason of reducing the assignment of the messenger position from seven to five days per week. No messenger service is being performed on the days the messenger is not on duty.

There is nothing in the Clerks' Agreement providing that the making of additional copies of communications received in telegraph offices is work belonging to and which must be performed exclusively by messengers. In smaller offices where messengers are not employed this work is and always has been performed by the telegraphers. In the larger offices the making of additional copies by the messenger is nothing more than a practice that has prevailed with the obvious consent of the telegraphers—not by reason of any contractual requirement. So far as the delivering of messages and other communications is concerned we have shown that the telegraphers are not performing this service—they are performing no messenger service of any kind.

Due to the gradual curtailment of work activities since the inception of the 40-Hour Week, demanded by and awarded to the non-operating employees, most of the Carrier's offices are closed down on Saturdays, Sundays and holidays. Therefore, the services of the messenger on these days have not been necessary and accordingly cannot be justified. It was for this reason that the assignment was reduced from seven to five days per week.

It would seem that the question of determining the Carrier's service requirements, the assignment of personnel, etc., is one coming within the province and jurisdiction of Carrier's management, rather than one to be determined by the Employees. And where, as here, the Carrier's action has resulted in no violation of any agreement, that no messenger service is being performed by "persons not covered by the Clerks' Agreement" there can be no basis for the Employees' contention and claim as here presented.

In the light of the foregoing, therefore, there is, obviously, no basis in fact for the Employees' contention that messenger work is being performed by "persons not covered by the Clerks' Agreement" as here alleged. The contention and claim of the Employees should accordingly be denied.

The substance of matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced)

OPINION OF BOARD: In its general office building at Kingsville, Texas, Carrier maintains a telegraph office which is open twenty-four hours a day, seven days a week, for the handling of train orders, and receipt and transmission of various communications via Morse code or teletype. Prior to September 19, 1953, a seven-day Messenger position with assigned hours of 8 A. M. to 5 P. M. was located in the telegraph office. The assigned duties as set forth by bulletin were: "Handling telegrams, reports, etc., and making ditto copies of telegrams, reports, etc. Picking up [and] delivering telegrams, reports, etc., and other duties as assigned to position." The two rest days of the position were covered by a relief position.

Due to the gradual curtailment of activities following the advent of the forty-hour week, most of the Carrier's offices at Kingsville were closed down on Saturdays, Sundays and holidays. The Carrier finally determined that messenger service was not needed on said days. It therefore abolished

the above-noted relief assignment and changed the Messenger position to a five-day basis, Monday through Friday, 8 A. M. to 5 P. M., with one hour for lunch. The petitioning Organization contends that messenger service has remained to be performed on Saturdays, Sundays and holidays. It asserts that on said days the Carrier has assigned such work to persons outside the Agreement and in violation thereof.

The evidence indicates that no messenger service as such has been performed on Saturdays, Sundays and holidays since the schedule change already described. Among the assigned duties of the Messenger position both before and after September 1953 has been the making of ditto copies of messages received by the telegraph service employees via telegraph or Morse code. After the Messenger position was reduced to five days, such ditto work as was performed on Saturdays and Sundays from 8 A. M. to 5 P. M. has been done by telegraph service employees. The Messenger had never performed all of this work, however. Ditto work arising in the telegraph office outside the scheduled hours of the single Messenger position has always been handled by telegraph service employees. Moreover, prior to the introduction of the ditto process and teletype, telegraph service employees performed all necessary duplication of messages addressed to more than one person by the use of carbon paper.

The Scope Rule of the subject Agreement does not expressly reserve the work in dispute to employees covered thereby. As we have seen, past practice fails to disclose that this work has been performed exclusively by employees classified as Messenger or any other position under the Clerks' contract. It follows that exclusive jurisdiction over said work is not reserved under the Agreement and that a denial award is warranted. In view of this finding no comment is necessary on the third party notice question that has been raised.

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 Employee involved in this dispute are respectively Carrier and Employee 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 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 27th day of November, 1957.