

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, 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 Employees, effective September 1, 1949 was violated at the Walla Walla, Washington Agency when R. G. Jansen was given run-around on call to perform work on one of the rest days of the position to which he was regularly assigned; and

(b) He shall now be compensated for eight (8) hours pay at one and one-half times the straight time hourly rate of \$333.48 basic per month for Sunday, February 27, 1955.

EMPLOYEES' STATEMENT OF FACTS: R. G. Jansen, with a seniority date of June 29, 1926, is the regular occupant of a position titled "Depot Agent", Group 5, Position 1; hours of assignment 6:45 A. M. to 3:45 P. M.; work week assignment Monday through Friday with Saturday and Sunday as days of rest; rate of pay \$333.48 basic per month. The duties of the position as shown on Bulletin No. 11, dated January 6, 1954 are:

"Must be familiar with General Rules and Instructions with general knowledge of rates and tariffs. Supervise the morning operation in unloading trains and connecting carriers, prepare shipments for delivery and forwarding. Assist on pickup and delivery routes when necessary."

which means that the occupant of the position is required to and does meet and unload Union Pacific Railway Train No. 346 at 6:45 A. M. This is a part of the job content of the position. About 7:15 A. M. he goes to the Northern Pacific Depot and meets and unloads Train 347. He then returns to the Union Pacific Depot around 8:30 A. M., prepares and delivers fish, other perishables and machinery parts, identified as expedite traffic. After this delivery is made he prepares and takes out express traffic for delivery to the business section of the city which keeps him occupied until the end of his tour of duty.

The force at Walla Walla consists of four employees, including the Agent. Note 1 to Rule 1 specifically recognized the right of the Agent at such an office to perform regularly routine agency work. In Award 5699, Referee Wenke, in denying a claim which arose at McGehee, Arkansas, which had the same number of employees as Walla Walla, it was said of Note 1 to Rule 1:

"This Note specifically authorizes the Agency to have the Agent at McGehee regularly perform this routine agency work and no violation of the parties' Agreement results from his doing them."

As in Award 5699, there was no violation of the Agreement resulting from the Walla Walla Agent's actions with respect to this particular transaction.

In the handling of this claim, Employees contended that claimant was entitled to a call because one of his duties was to assist in unloading Train 346 on Monday through Friday. This contention is not well taken because claimant did not have the exclusive right to this work. The Agent regularly performed work of this kind in the ordinary course of operations. Therefore, claimant was not the "regular employee" within the terms of Rule 45-A (j), upon which Employees rely in support of their contention.

Award 5700, cited by Employees, involved a factual situation unlike the one here. There the Agent was regularly performing relief service to the exclusion of a day's work for a furloughed employe. There is no furloughed employee involved here and the work performed by the Agent, which was not of a full day, but only a few minutes, was not done in the regular course of the operations at the office. On the contrary, the Agent was confronted on Sunday morning, February 27, 1955, with an emergency and he did the only thing he could do under the circumstances.

At all times human remains demand expedited handling. Item 1500 of Railway Express Agency's Merchandise Classification reads as follows:

"In the absence of routing instructions from the shipper, corpses, burial cases and funeral supplies, including flowers, must always be forwarded via the route making the quickest time to destination, taking into account combination routes with other Companies."

In the instant situation the Agent, with such short notice, had no choice but to deliver the shipment. Failure to effect delivery would undoubtedly have added to the grief of the survivors of the deceased, wholly apart from the bad impression of the Carrier such failure would have created. It would have been callous and inhuman to refuse to handle the shipment immediately upon arrival.

This was, in every sense of the word, an emergency. Immediate action was required. In taking that action, no Agreement rule was violated, but even if there had been a technical violation, it is submitted that there is no justification for this claim for a day's pay at punitive rates for a few minutes work. The Board has repeatedly held that pro rata is proper payment where an employee is deprived of work in violation of the Agreement. However, in this case there was no violation of the Agreement resulting from this emergency situation. Employees have failed to show that claimant had the exclusive right to perform the work in question under the Rules relied upon by them. The claim 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: Claimant is the Depot Agent at Walla Walla, Washington where there is maintained an agency consisting of an agent (excluded from the agreement), and two other employees besides claimant. This agency is regularly closed on Saturday and Sunday.

Claimant as a regular part of his job meets and unloads Union Pacific train No. 346 which arrives at Walla Walla at 6:45 A. M. He does this regularly five days a week Monday through Friday.

The present claim arises out of the following incident:

On Saturday, February 26, 1955, the Portland Agency forwarded a corpse on Union Pacific train No. 346 consigned to the Marshall Funeral Home at Walla Walla, Washington, without giving any advance notice to the Walla Walla Agency. The corpse which was shipped in a sealed car arrived Sunday morning, February 27, 1955, at 6:45 A. M. The local undertaker communicated that morning with the agent (who knew nothing of the matter) and advised him of the arrival of the shipment. The agent then went to the depot, opened the car, and assisted in removing and delivering the corpse then and there to the undertaker. This took three or four minutes.

Claimant now seeks to be allowed 8 hours pay at one and a half times the straight time hourly rate because he was not called to perform the work in question—work which is, as he claims, part of the job content of his position and work which he performs during his regular workweek assignment.

The Brotherhood argues that since Saturday and Sunday are unassigned days for all employees at this agency, including the agent, Claimant was entitled to the work in question, under Rule 45-A (j) which guarantees to claimant the right to perform this work on his rest day. On the other hand, the Carrier relies on the exception provided in Note 1 to Rule 1 permitting the agent at Walla Walla to perform routine agency work.

We are of the opinion that a determination of this claim does not require us to pass upon the contending views as to whether these particular sections of the agreement as such are applicable. Instead we recognize that an emergency existed in this case.

On being contacted by the Funeral Director, the agent who concededly had no prior notice of the situation, had no alternative but to make immediate delivery. A delay no doubt would have added to the grief of those awaiting the body. When, suddenly presented with this situation early Sunday morning the agent released the body, he acted in complete good faith. To have held up delivery, would have indicated a callous and inhuman regard for the feelings of others, and had the agent not acted promptly that Sunday morning, public opprobrium and condemnation could well have been brought down upon the Agency.

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.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.