Award No. 9398

Docket No. CLX-8775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, 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 at the Walla Walla, Washington Agency when J. D. Helfer was given run-around on call to perform work on Washington's Birthday, February 22, 1955; and

(b) He shall now be compensated for eight (8) hours' pay at one and one half time the straight time hourly rate of $315.10 basic per month for Washington's Birthday, February 22, 1955.

EMPLOYES' STATEMENT OF FACTS: J. D. Helfer, with a seniority date of June 2, 1940, is the regular occupant of a position titled "Driver", Group 8, Position 1; hours of assignment 12:30 P. M. to 9:00 P. M.; work week assignment Monday through Friday with Saturday and Sunday as days of rest; rate of pay $315.10 basic per month. The duties of the position as shown on Bulletin No. 3, dated October 25, 1954 are:

> "Pickup and delivery of Express traffic, working trains, preparing shipments for forwarding and delivery, care of motor vehicles and care of premises."

Which means that the occupant of the position is required to report for duty at 12:30 P. M. He immediately begins work at the counter, making deliveries to patrons and accepting both prepaid and collect outbound shipments, assessing and collecting proper charges on prepaid traffic. Shortly after 1:00 P. M. he takes a truck and makes deliveries to the residential sections of the city and makes pick-ups of outbound traffic until his meal period at 6:30 P. M. Returning from his meal period at 7:00 P. M., he makes pick-ups of produce traffic, bills outbound express traffic, delivers inbound express traffic to patrons calling at the depots, and loads Union Pacific Train 345 and Northern Pacific Train 348.

The claim here is rather unique, in that it is contended throughout that the work performed by Agent Stoneman on the holiday in question was work of the incumbent of the position of Cashier, but since employe Casey indicated he was unavailable for a call, as did Driver Helfer for that matter, the latter nevertheless should be paid an additional day's pay in February 1955, at time and one-half rate. The burden of proof is on the Employes to show that the work of Cashier was in fact necessary or performed on the date in question. This they have failed to do. The evidence is to the contrary, namely that no work was performed on the holiday to which the original claimant, Cashier Casey, or the substitute claimant, Driver Helfer, had a preferential right to demand under the Agreement. Holidays are not working days as spelled out in the following sentence in Rule 63 (b):

> "To determine the working days in the month or week, deduct the rest days and holidays from the number of calendar days."

If the services of an employe are necessary or required on a holiday, he will be notified or called in accordance with the provisions of the Notified or Called Rule 55. Depot Agent Jansen was notified on February 21, 1955, to perform his regular duties from 7:00 A. M. to 4:00 P. M., on February 22, 1955. Agent Stoneman at that time had no knowledge of what the traffic situation would be on the holiday, or the additional help necessary, and asked employes Casey and Helfer if they would be available for call if their services were required. Both replied in the negative. The claim that Driver Helfer, whose position is in no way involved, should be granted a gratuity in the way of an extra day's pay at punitive rate, because Cashier Casey's position was not necessary to be worked on February 22, 1955, is wholly unsupported by the facts and the rules of the effective Agreement and should be denied as entirely without merit.

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

OPINION OF BOARD: It is undisputed that the Carrier's force at the Walla Walla, Washington, office consisted of three regular full-time employes who are covered by the applicable rules Agreement, and an Agent who is excepted from the rules by Section (c), Rule 1, Article I of the Agreement. Our careful examination of the record fails to disclose any evidence that the work performed by the Agent on February 22, 1955 exceeded the regular "routine agency work" which he was permitted to do under Note 1 to Rule 1, Article I, of the Agreement.

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;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May, 1960.