

Award No. 9788

Docket No. CLX-9432

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, 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 in the Mississippi Division Train Service Employees Seniority District when work belonging within that district was arbitrarily transferred to the Central Illinois Train Service Seniority District without prior conference and agreement;

(b) The work shall now be returned to the Mississippi Division Seniority District and Messengers P. T. Baker, A. Sharp, R. B. Shrowsbury, S. G. E. Vaughn, and all other Train Service employees adversely affected compensated for salary and earnings loss sustained retroactive to and including July 17, 1953; and

(c) Carrier shall be required to make a joint check of subsequent operations in the Mississippi Division Train Service Seniority District to determine the individuals and the amounts of salary and earnings loss that have been sustained since this violation was perpetrated.

EMPLOYEES' STATEMENT OF FACTS: Effective July 17, 1953 the pool of four messenger positions assigned to operate on Illinois Central Trains 8, 25, 23 and 24, Memphis, Tennessee-Carbondale, Illinois-Greenville, Mississippi Route, was abolished. (Exhibit "A").

July 20, 1953, Bulletin No. 35 was issued advertising a limited service on Illinois Central Trains 23 and 24, Memphis via Greenville. (Exhibit "B").

Prior to this abolishment, the 4-men pool which was discontinued operated in addition to a pool of four messengers operating on Illinois Central Trains 3, 4, 25 and 8 between Memphis and Cairo, Illinois. A pool of messengers in the Central Illinois Division Seniority District also operated on Illinois Central Trains 3, 4, 25 and 8 between Chicago and Cairo, Illinois. The relationship of

of the Mississippi Division without precipitating a claim from the employees of the Illinois Division represented by General Chairman Scholl.

The arrangement made in 1947 to bring the Messengers of the Mississippi Division north of Cairo to Carbondale, as pointed out in Mr. Wright's letter, contemplated no attempt to invade the rights of the Illinois Division men to man Trains 25 and 8 through between Chicago and North Cairo.

The need for the Mississippi Division Messenger on Trains 8 and 25 between North Cairo and Carbondale no longer exists. It cannot be successfully maintained in the light of the facts in the instant case, and the decisions and awards cited by Carrier, that it is not permitted to rearrange train service positions to meet the needs of the business. Its duty is to regulate and direct the flow of traffic to meet the needs of the business, provided that in rearranging train service positions, the rearranged runs are paid the rates of pay and overtime in accordance with all rules of the agreement. To hold otherwise would have the effect of abridging the right Carrier must exercise in directing the flow of traffic to meet the needs of the business.

The burden is on the employees to show that Carrier's action in the instant case was in violation of the Agreement. This they have failed to do. Carrier on the other hand has shown conclusively that there has been no violation of the rules relied upon by Employees, and that the decisions and awards of Express Board of Adjustment No. 1 and of this Board denying similar claims are determinative of the issue in the instant case. It follows that a denial of the claim is in order under the facts, rules, decisions and awards cited by Carrier.

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

OPINION OF BOARD: Prior to July 17, 1953 the Mississippi Division Messenger out of Memphis assigned to northbound train No. 8 detrained at Carbondale, Illinois, and returned to Memphis on southbound train No. 25. Illinois Division Messenger also covered northbound train No. 8 from North Cairo to Carbondale. All money and valuables on train No. 8 were checked over to the Illinois Division Messenger at North Cairo and to the Mississippi Division Messenger on train No. 25 between Carbondale and North Cairo. Insofar as trains No. 25 and 8 were concerned these seniority districts overlapped between North Cairo and Carbondale, Illinois a distance of approximately fifty-four miles. There was an understanding that these Mississippi Division men were not to perform any local work between North Cairo and Carbondale, Illinois.

On July 17, 1953 Carrier abolished the Memphis-Carbondale pool on trains No. 8 and 25. From that time on the checkover of the money was made on train No. 25 at North Cairo.

On September 13, 1953 the Organization instituted the claim herein alleging that Carrier's abolishment of the Memphis-Carbondale pool violated Rules 5, 22 and 79-A of the applicable Agreement. On March 22, 1954 this claim was declined by Carrier's General Manager and was appealed to this Division on September 25, 1956.

The long delay in Employees progressing this claim to this Division indicates that they themselves were in doubt of its facility and that they acquiesced in the decision of the Carrier. Furthermore, the claim must fail for lack of proof. Mere assertions and conclusions are not sufficient to substantiate a claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.