

Award No. 9812
Docket No. CLX-9206

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

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 Springfield, Missouri Terminal through a run-around on call of Train Service Employee A. Q. Smith to make a round trip as Assistant Messenger on Frisco Railway Company Trains 105 and 106 beginning October 24, 1953; and

(b) He shall now be compensated at the straight time hourly rate of \$340.15 basic per month for the round trip on Frisco Railway Company Trains 105 and 106 Springfield, Missouri-Memphis, Tennessee Route and return October 24-25, 1953.

EMPLOYEES' STATEMENT OF FACTS: A. Q. Smith, with a seniority date of November 23, 1942 is one of a pool of three Assistant Messengers assigned to operate on the St. Louis-San Francisco Railway Company Trains 105 and 106 Springfield, Missouri-Memphis, Tennessee Route. Salary \$340.15 basic per month. Schedule of operation as follows:

1st day: Report Springfield for Train 105 — 3:05 A. M.

Depart — 3:35 A. M.

Arrive Memphis 9:50 A. M. — Release 10:00 A. M.

Report Memphis (same day) for Train 106 — 6:45 P. M.

Depart — 7:15 P. M.

2nd day: Arrive Springfield — 2:40 A. M. — Release — 3:00 A. M.

3rd day: Layover

Scheduled to report again for his regular turn in the pool on Train 105 at 3:05 A. M., thus giving him 48 hours and 15 minutes layover. The duties of the position consist of assisting the Messenger in the performance of his duties.

the Claimant could have made the trips in question in time to return to cover his regular assignment.

A decision of Express Board of Adjustment No. 1 which is in point here is Decision E-1454, Referee Thompson (copy attached). In that case an emergency was created by the illness of a Messenger. It was necessary to fill the vacancy and the Carrier official in charge use a Special Agent, not covered by the scope of the Agreement, to protect the run. In denying the claim of a station employe that he should have been used, Referee Thompson pointed out that an emergency was involved and in respect thereto stated, in part:

"The real factor in determining the extent of the effect of the emergency was the arrival and departure of a late train and all that that would imply with the schedule and movement of traffic."

A similar situation confronted the Carrier's General Agent at Springfield in the instant case. An emergency had been created by the train wreck and injury to the Messenger. The time of departure of a late train was unknown. It was necessary that the vacancy be filled by an available employe. Claimant was not available because of the uncertainty of the time of departure and the probability that he would not be able to return in time to protect his regular assignment. An available employe was used in accordance with the provisions of Rule 74 (d).

The claim in the instant case is without merit and should be denied because Claimant was not available, due to the emergency which arose on the date in question, and under which emergency the Carrier was permitted to use another employe in accordance with the provisions of Rule 74 (d).

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

(Exhibits not reproduced)

OPINION OF BOARD: Train 105 operating between Kansas City and Springfield, Missouri was wrecked on October 24, 1953 near Fort Scott, Kansas. Train 105 operated between Kansas City, Missouri and Memphis, Tennessee. Train 106 operated in the reverse direction. The wreck occurred at 1:42 A. M. on that date. A stub train was made up to complete the operation. The Messenger assigned thereto was injured and taken to a hospital. Because of this injury Assistant Messenger H. S. Mace, one of the pool of three Assistant Messengers, who was scheduled to entrain at Springfield, Missouri, was moved up to the position of Messenger-in-Charge. This left a vacancy in the Assistant Messenger position which was filled by assigning thereto a Station Employe, E. L. Wilson, who was not a train service employe. The wreck occurred at 1:42 A. M. and the stub train departed from Springfield at 12:15 P. M.

Claimant Smith was on his "layover" as a regular messenger with headquarters at Springfield, Missouri. He was required by the agency to register his address and his telephone number and to indicate whether or not he was available for extra, relief or substitute work during his layover period. He met these requirements.

This dispute arises under Rule 74 (d):

"Train service employes shall be used to perform all extra, substitute or relief train service work except that in cases of emergency where no extra train service employes are available other employes

may be used to perform such work and shall be paid in accordance with the provisions of these rules covering train service employes. They shall be paid at their own rate of pay for such service if it is higher than the rate of work performed."

First of all Carrier says that the Organization delayed too long in progressing claim to this Board. There was a conference on this claim on February 15, 1954 and another on August 8, 1955. In between those two dates there was a change in General Chairman and General Manager. There is no time limit for appeals in this Agreement and the correspondence and conferences between the parties indicate that there was never any intention on the part of the Organization to abandon the claim. So it cannot be said that the Organization was guilty of laches.

The next question is whether or not the wreck constituted an emergency as provided in Rule 74 (d).

As said above the wreck occurred at 1:42 A. M. and the stub train departed from Springfield at 12:15 P. M. 10½ hours later. The emergency arose at the time of the wreck and the reason for the replacement of the Assistant Messenger position was the injury to the Messenger. Carrier knew, or should have known, right after the wreck that the position of Assistant Messenger would have to be filled. Claimant Smith was available to fill the position but the Agent did not call him. The Carrier violated 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 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 Carrier violated the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of February, 1961.