

Award No. 13867
Docket No. CL-14151

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5332) that:

(1) Carrier violated the Clerks' current Agreement at Memphis, Tennessee, on December 29, 1961, when it permitted an employee not covered by the Clerks' Agreement to perform Messenger work.

(2) That Mr. A. L. Doser be compensated for two hours at the punitive rate of his Messenger position for December 29, 1961, and for subsequent dates on which a like violation occurs.

(3) That a joint check be made of Carrier's records to determine reparation due Mr. Doser.

EMPLOYEES' STATEMENT OF FACTS: On Friday, December 29, 1961, Mr. J. W. Hutcherson, Commercial Agent, Memphis, reported to the Memphis Local Freight Office at 8:00 A. M., and picked up telegrams, letters, etc., and delivered them to the Carrier's Commercial Office located uptown in the Exchange Building. There was a regular assigned Messenger on duty at 8:00 A. M., but Carrier elected not to use this Messenger to perform the work, and instead, permitted Mr. Hutcherson to perform the duties of the Messenger position.

Mr. A. L. Doser is regularly assigned to position of Messenger at Memphis, working from 4:00 P. M., to 12:30 A. M., with rest days of Monday and Tuesday. Mr. J. R. Holden's Advertisement N-48 of September 27, 1960, states that the duties of the Messenger position consist of carrying messages from one office to another.

Claim was originated by Local Chairman J. S. Roberts, Jr., Memphis, with Mr. L. T. James, Agent, Memphis, on December 29, 1961, and was declined by Mr. James on the same day. (Employees' Exhibits A-1 and A-2.)

The reverse seems to have been the accepted practice and we are of the opinion that the rules of the Agreement did not intend that the work would be considered exclusively the work of clerks under the fact situation here presented."

Award 7081 (Referee Whiting) denied claim of a clerk, account mechanics securing oil and parts themselves when the clerk was not present to issue material. The Opinion, in full was:

"It appears that on Saturdays, Sundays and holidays subsequent to January 1, 1952 Mechanical Department employes helped themselves to oil and parts needed in their repair work but it does not appear that anyone performed the functions or duties of the Material Distributor on those days, so the claim is without merit."

Award 5391 (Referee Elson) and Award 5397 (Referee Donaldson) are similar.

Award 1554 (Referee McHaney). The Opinion in part was:

"Agent Wright did not come under the Clerks' Agreement. It is said that he did not come under any agreement. However, it is our opinion that a part of his duties as agent consisted in billing freight. The fact that clerk Hannah also billed freight did not give him the exclusive right to do so, and we conclude that there has been no violation of the Clerks' Agreement."

From the facts pointed out above it is evident that the messengers at Memphis did not have the exclusive right to carry papers to the Traffic office. If messenger work had been needed the first trick messenger was on duty and would have been used for the work. There was no need for the Claimant, the second trick messenger.

The Carrier respectfully submits that there was no violation of the agreement, and that the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 29, 1961, Commercial Agent J. W. Hutcherson, while traveling from his home to the Exchange Building in Memphis, stopped at the Local Freight Office at 8:00 A.M. where he picked up telegrams and mail for Carrier's Commercial Office.

Since the regular messenger, who was on duty at the time, was not used to perform the messenger work, Messenger A. L. Doser with hours between 4:00 P.M. to 12:30 A.M. claims he should have been called to deliver the messages and requests compensation for two hours service at the punitive rate. He takes the position that it was improper for an employe not covered by the Scope of the Agreement to perform work belonging to the Messenger craft. Furthermore, he urges that if the integrity of the Agreement is to be upheld, a penalty for violation must be imposed.

Carrier counters with the argument that the Scope is of the general type which does not confer upon messengers the exclusive right to deliver messages. It also maintains that it was the practice for the Commercial Agent to pick up the mail for his office and for his convenience.

The Agreement includes the classification of Messenger within the Scope and contemplates that this classification of employes perform the duties of delivering messages and mail. It does not, however, grant to these employes the exclusive right to carry all messages. In picking up the mail for the use of his office, Mr. Hutcherson was not encroaching on work exclusively reserved to Messengers. In fact, for some time the Commercial Agent had picked up the mail while on his way to his office.

Under the circumstances in this case in the absence of an exclusive grant to Messengers of the work under consideration, we hold that the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 30th day of September 1965.