



Award No. 19066
Docket No. CL-16909

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6190) that:

1. Carrier violated the Clerks' Rules Agreement at Aberdeen, S. Dakota, when on November 10 and 11, 1965, it required or permitted the Agent, an employe outside the scope and application of the Clerks' Agreement to perform work covered thereby.

2. Carrier shall now compensate furloughed employe J. C. Schwan for eight (8) hours, or \$21.8784 per day, for each day, November 10 and 11, 1965.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1965, employe J. C. Schwan was the regularly assigned occupant of General Clerk Position 6783 at Aberdeen, S. Dak. The principal duties of Position 6783 as assigned by Bulletin No. 23 (Employes' Exhibit "A") dated March 10, 1965, were:

"Make Yard Check, interchange and C.C.R. Reports, messenger runs and general clerk duties."

and in accordance therewith employe Schwan, as occupant of Position 6783 was required to deliver the messages to the Yard Office in person.

General Clerk Position 6783 was abolished at 5 P.M. August 31, 1965 and employe Schwan reverted to the furloughed list.

Following abolishment of Position 6783, messages destined for the Yard Office were then telephoned to the Yard Office by either of the 2 clerks remaining in the Freight Office. Apparently the telephoning of the messages to the Yard Office did not prove to be satisfactory and on November 10, 1965, the delivery of messages to the yard office in person was resumed. However, in lieu of assigning this work to a position and employe covered by the Clerks' Agreement, the Agent, an employe not covered thereby, assumed and performed this work on November 10 and 11, 1965, making two runs to the Yard Office -- one in the morning and one in the afternoon on each day.

or any other position within the scope and application of the Clerks Agreement as the Carrier will establish in its "Position".

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice
President-Labor Relations, to Mr. H. V.
Gilligan, former General Chairman, under date
of April 8, 1966.....Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. H. C.
Hopper, General Chairman, under date of
November 7, 1966.....Carrier's Exhibit "B"

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner claims that on November 10 and 11, 1965, the Agent at Aberdeen, South Dakota, made two messenger runs between the Freight office and the Yard office. The record illustrates that the Agent on the two days in question did, in fact, make several trips between the Freight office and Yard office handling matters connected with his job as Agent, similar to trips he made both prior and subsequent to November 10 and 11, and that he probably did deliver switching orders or other messages to the Yard office on one or more of these trips. However, the record further indicates that the subject matter of these messages was previously phoned to the Yard office by Clerks on duty in the Freight office.

From the facts before us, it appears that the act of the Agent in taking paper copies of messages previously transmitted orally over the telephone when he was going to the Yard office on other business, is insufficient to be deemed "messenger service" of the nature to constitute a violation of the Agreement.

No other proof is in the record that the Agent performed messenger service of the nature required to prove a violation of the Agreement.

We will, therefore, dismiss the claim.

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 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.