

Award No. 523
Docket No. CL-518

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of J. D. Miller, baggageman, rate \$109.50 per month, Shawnee, Oklahoma, for pay, on call basis, on days between November 15, 1935, and February 9, 1936, when express employe was used to do work of baggageman on arrival of Train No. 44, a total of thirty-nine calls at \$1.60 each."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"The assigned hours on position of baggageman, rate \$109.50 per month, at Shawnee, Oklahoma, are from 9:30 A. M. to 6:30 P. M. He performs the usual duties of station baggageman, checking and delivering baggage, handling company mail, making baggage reports, loading and unloading baggage from trains, etc. The second trick operator was assigned from 5:30 P. M. to 1:30 A. M., but was required to work until 2:00 A. M. The telegraph operator ordinarily handles the baggage and cream shipments from Train No. 44, which is due to arrive at Shawnee at 1:15 A. M. For a number of years Train No. 44 was worked by the Interchange Clerk. This position was discontinued and the day baggageman was called to work Train No. 44 whenever it was late and the arrival time was past 2:00 A. M. Effective November 15th, 1935, the practice of calling the regular assigned baggageman to work Train No. 44 when it did not arrive until after 2:00 A. M. was discontinued and the work was performed by a Railway Express Agency employe. The Railway Express Agency employe does not hold seniority rights under the working rules agreement with the Clerical and Station Employees on the Rock Island."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, and the following rules thereof are in evidence:

RULE 1. Scope

"These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

have instances where our clerical employes handle express matter such as bill clerks at McFarland, Kansas, handling transfer shipments of express for which an arbitrary compensation is allowed by the Express Agency, each of the bill clerks at McFarland receiving \$10.00 per month direct from the Express Company for this service.

"The handling of baggage by an Express Agency employe at Shawnee was an emergency arrangement followed only when the train was late and did not arrive on the assigned time of the telegrapher, and since the telegraph operator performed the work when the train was on time we see no reason why a claim should be made by a baggageman not assigned anywhere near the hour that the emergency service was rendered, or why he should be called to take care of work which in the regular hours of assignment was handled by a telegraph operator and was, therefore, the assigned duties of the telegrapher for his regular tour of duty. It was not the clerk's duty. No compensation was allowed the Express Agency employe for the handling of Rock Island baggage in an emergency because there was not sufficient work of this kind performed to warrant the allowance of any special compensation. It was merely an accommodation to take care of the emergency work and accommodated the public in receiving and delivering their baggage shipments."

OPINION OF BOARD: The subject at issue in this dispute is claim of Baggageman J. D. Miller, Shawnee, Oklahoma, for pay on call basis, on days between November 15, 1935, and February 9, 1936, when an express employe was used to do work of baggageman on arrival of Train No. 44, a total of 39 calls at \$1.60 each.

The contention of the employes in this claim is that the work of station baggageman at Shawnee comes within the scope of the working rules agreement between the parties, effective January 1, 1931, and that Mr. Miller, claimant, is assigned to position of baggageman at Shawnee by virtue of his seniority rights in that territory and is entitled to be called to perform service as baggageman whenever other station employes are not available to perform their regularly assigned duties; and cite various rules of the existing agreement between the parties in support of their contention.

The carrier contends that the question involved in this dispute is not one of regular assignment, but only of meeting train No. 44, due at Shawnee at 1:15 A. M.; when it arrives after 2 A. M. The assigned hours of the claimant in this case are from 9:30 A. M. to 6:30 P. M. A telegrapher-clerk was employed up to 2 A. M. and when train No. 44 arrived prior to 2 A. M. this employe met the train, after which, during the period at issue, and when the train arrived later than 2 A. M., the work was assigned to an employe of the Express Company under an agreement between the Railway Express Agency and the carrier.

In the opinion of the Board the rule referred to as existing between the Railway Express Agency and the carrier, was not designed for the performance of work by express employes which belonged to employes of a different classification, except it be through arrangements made in conference and negotiation between the carrier and the representatives of the employes of that classification. Rather such rule is indicated in the establishing of joint agencies or a joint service and for which the employe receives compensation in some form from each of the parties to the agreement; and this is evidenced in the cases cited by the carrier where clerks of the carrier are compensated by the Express Agency in addition to the compensation received from the carrier.

Insofar as the calling of employes to perform certain work outside of their regular assignments or assigned hours is concerned, the Board submits that Rule 1, or the Scope rule of the agreement between the parties is specific in its designation of the classes of service to which employes may be assigned, while various other rules cited apply to seniority rights and assignments. Rule 52 of the agreement applies to employes called to perform work not continuous with, before or after the regular work period.

In the dispute covered by the instant case the facts are evidenced that in accordance with the requirements and specifications of Rule 52 of the agreement between the parties, effective January 1, 1931, Baggage man J. D. Miller, by virtue of his seniority rights and following the discontinuance of the position of Interchange Clerk, an employe who had previously worked Train No. 44, was called prior to November 15, 1935, to work train No. 44 whenever it was late and the arrival time was past 2 A. M., and in discontinuing the calling of Baggage man Miller, or the baggage man holding seniority rights in that territory, and assigning such work to an employe of the Express Agency the carrier violated the terms of the existing agreement between the parties.

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 employe involved in this dispute are respectively carrier and employe 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 terms of the existing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of October, 1937.