

Award No. 5317
Docket No. CLX-5211

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INCORPORATED

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective October 1, 1940 was violated at the Passaic, N. J. Agency through failure and refusal of management to allow James Stefanacci his choice of representation at an alleged investigation conducted July 22, 1949 resulting in his suspension from the service without pay for three days; and

(b) The investigation shall be declared a nullity, the record of James Stefanacci cleared of the charge and that he be reimbursed for wage loss sustained covering the three days period of suspension—August 15, 16 and 17, 1949.

EMPLOYEES' STATEMENT OF FACTS: James Stefanacci is the regular occupant of a 6-day position at the Passaic, N. J. Agency titled driver, hours of assignment 9:20 A. M. to 6:00 P. M. Monday to Friday inclusive, Saturday 9:20 A. M. to 3:00 P. M., salary \$58.82 basic per week—day of rest Sunday—with a seniority date of January 20, 1944.

July 18, 1949, Agent W. J. Hoffman wrote a letter to Stefanacci reading:

"In accordance with Rule No. 29 of the Rules Governing Hours of Service and Working conditions, you are hereby notified to be present at the company's office No. 1 Lexington Ave., Passaic, N. J. on Friday, July 22, 1949 10:00 A. M. Daylight Saving Time for the purpose of investigation of an accident in which you were involved on July 14, 1949, while driving Railway Express Truck No. 28315.

You are charged with having an accident while driving Company vehicle No. 28315, which accident resulted from carelessness on your part. You were further charged with failing to secure proper information and failing to properly report the accident to Company Officials.

The claim is without merit and should therefore be dismissed on the grounds: (a) that there has been no violation of the Clerks' Agreement, and (b) that the National Railroad Adjustment Board does not have jurisdiction of the subject matter of this controversy.

(Exhibits not reproduced.)

OPINION OF BOARD: Our Opinion in Award 5316 also has application to the instant case.

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 Employee within the meaning of the Railway Labor Act, as approved June 21, 1934; and

The Board does not possess jurisdiction upon which to render an Award herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of April, 1951.