Award No. 5700
Docket No. CLX-5580

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

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 the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949, was violated at the Neosho, Missouri Agency through failure and refusal of Management to assign furloughed employe G. L. Mills to relief service on position 2, group 5 (later position 1, group 6), on calendar Saturdays, and assigned the work to the Agent, excepted from agreement coverage;

(b) Mills shall be compensated for eight (8) hours a day at the basic monthly rate of $238.80, for each calendar Saturday, beginning September 3, 1949 and continuing up to the date when the agreement violation complained of has been corrected; and

(c) Management shall be required to make available to employe representatives the daily payroll of the Neosho Agency operation, covering the period in question for the purpose of determining the gross amount of daily earnings loss sustained by classified employes in pursuance of their relative seniority and availability.

EMPLOYES' STATEMENT OF FACTS: August 31, 1949 the Carrier listed the following positions as being in existence at the Neosho, Missouri Agency: (Exhibit "A")

Gr. No.	Pos. No.	Title	Start	Meal Period From	Meal Period To	Finish	Day of Rest	Salary
6	1	Clerk-Chauffeur	8:30A.	1:00P.	2:00P.	4:50P.	Tues.	$240.04
5	2	Chauffeur-Clerk	8:30P.	12:30A.	1:30A.	7:05A.	Sun.	240.04
		(Released - 10:30P. to 1:45A.)						

It will be noted that position 1, group 6, is scheduled in 7-day operation, and the incumbent was relieved by furloughed employe Mills on calendar Tuesdays.

Agreement. This Board has repeatedly held that it is a rule of contract construction that all provisions in the contract are to be given effect if it is possible to do so and that in doing so the specific provisions will control the general provisions, leaving the latter to operate in the general field not covered by specific provisions. (See Award 4451.)

Note 1 to Rule 1 deals with a specific situation whereby Agents at offices where not to exceed five full-time employes are regularly employed are permitted to perform routine agency work and as such has the effect of excluding such specifically described situations from the operation of the Reduction of Force Rule. In the same manner the provisions of paragraph (j) of Rule 45-A are general in character dealing with the assignment of extra work under the 40 hour work week. Note 1 to Rule 1 being specific in nature, as described above, has the effect of excluding the specifically described situation which it covers from the operation of the provisions of paragraph (j) of Rule 45-A.

It follows, therefore, that the proper construction to be placed upon the Agreement, giving effect to all of its provisions, is that the specific situation contemplated by Note 1 to Rule 1 clearly prevails over the general provisions contained in Rule 19 and paragraph (j) of Rule 45-A or any other rule in conflict therewith. Any other construction would make Note 1 to Rule 1 meaningless and would be contrary to the intent of the parties. Attention is directed to the fact that Note 1 to Rule 1 appeared for the first time in the Agreement of August 1, 1937, and has been continued without modification in the revisions of the Agreement which became effective October 1, 1940, and September 1, 1949.

Employes have completely failed to meet the burden of proof required to sustain their contention that the Agreement effective September 1, 1949, has been violated because furloughed employe G. L. Mills has not been assigned on calendar Saturdays beginning September 3, 1949, and the claim in the instant case should be denied in its entirety.

All evidence and data set forth have been considered by the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involves the performance on Saturdays, since September 3, 1949, of certain work by the Agent at Neosho, Missouri which, from Monday through Friday, is assigned to and performed by the occupant of Position 1, Group 6, clerk-chauffeur, a classified position with Saturdays and Sundays as its relief days. The position of Agent at Neosho does not come under the scope of the Agency's Agreement with the Brotherhood, see Rule 1, Exceptions, (c), and therefore it is the Brotherhood's contention that having the Agent do this work violates the scope of its Agreement with the Agency. The claim is made on behalf of G. L. Mills, an available furloughed employe for whatever length of time the violation continues.

It is a fundamental rule that work of a class covered by an Agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the Agreement is in violation of the Agreement except as the parties, in their Agreement, may otherwise provide.

The factual situation at Neosho, there being two full-time and one part-time positions scheduled, makes Note of Rule 1 of the parties' Agreement applicable to the position of Agent there. This Note is as follows:

> "Note 1: Employes excepted in this Section (c) will neither be required nor permitted to perform regularly routine agency work, except at offices where not to exceed five (5) full-time employes are regularly employed to care for local operations, not including those required to handle transfer at such offices."

It is the Agency's thought that by reason of this Note it was specifically authorized to do what it did. It will be noted that the authorization applies to routine agency work regularly performed. The "Note" is a modification of the Scope Rule of the parties' Agreement and has application in a proper situation of fact where the work is regularly being done. But it is not intended for nor does its language permit the Agency to invoke its application to have others, outside of the Agreement, perform the work of a regularly assigned position on its relief days when such work is being performed by the employe assigned to such position as a part of his regular duties on the days of his regular assignment.

The work of Position 1, Group 6, clerk-chauffeur, performed by the Agent on Saturdays, a relief day of that position, falls within the category of Rule 45-(a)-(j) which is as follows:

> "(j) Work on Unassigned Days. Where work is required by the management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases, by the regular employe."

It was work for the performance of which Claimant should have been called.

The Agency contends (c) of the Claim is not properly here because it was no part of the Claim as handled on the property and further, if it is properly here, it is not proper for the reason that it is not the Agency's duty to develop claims for the Employes.

As to the first of their contentions, we think the following from Award 3256 of this Division is applicable and the principle controlling, namely: "The subject matter of the claim,—the claimed violation of the Agreement,—has been the same throughout its handling. The fact that the reparations asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it."

As to the second objection it should be remembered that the records of the Agency asked for by (c) are not to develop claims for the Employes but only to determine the extent of the reparations to be paid on the claims made; if allowed. As said in Award 4821 of this Division: "A Carrier will not ordinarily be required to search its records to develop claims against itself. But when a claim has been established and the date of the violations are determined, the Carrier can be required to supply the names or permit a representative of the Organization to search them out." See also, to like effect, Interpretation No. 1 to Award 1421, and Award 4445 of this Division.

We think (c) of the Claim, as made, is broader than necessary for the purpose for which it should be authorized. We think the records of the Agency should be made available for joint check by the parties for the purpose of determining the extent of the work done by the Agent on Saturdays which, from Monday through Friday, was part of the work assigned to and performed by the clerk-chauffeur, Position 1, Group 6, so that it may be determined over what period of time it has continued.

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 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 Agency violated the Agreement.

AWARD

Claims (a), (b), and (c) sustained except that (c) is limited as in the Opinion set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.