

Award No. 6081
Docket No. CLX-6091

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, 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, Incorporated, and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at the Houston, Texas terminal through a run around on call of J. E. Horton to make trip on Burlington Rock Island Trains 12 and 11, Houston-Waxahachie, Texas route, December 30, 1950; and

(b) He shall now be compensated in accordance with Agreement Rules for salary loss sustained as a result of not being assigned to the trip.

EMPLOYEES' STATEMENT OF FACTS: J. E. Horton, with a seniority date March 7, 1917, is one of a pool of two messengers assigned to operate on Burlington-Rock Island Railroad trains 12 and 11, Houston-Waxahachie, Texas route, which is located in the Southern Texas Seniority District. His scheduled hours for the month of December, 1950 were 162 hours and 30 minutes, and his rate of pay was \$272.70 basic per month.

G. H. Gwinn with a seniority date of July 3, 1945 is a furloughed train service employe in the same seniority district.

Messenger Horton was scheduled to operate as follows:

Report at Houston, Tex., for train 12 at 8:30 A. M.; Depart 9:00 A. M.

No release at Waxahachie, Texas.

Depart from Waxahachie on train 11 at 3:00 P. M.; Arrive at Houston 8:47 P. M.;

Released at Houston 9:00 P. M.

Copy of Bulletin No. 5 dated January 22, 1950 revealing this schedule of operation is hereto attached (Exhibit "A").

the lettered paragraphs of the Rule by its very terms restricts that Rule to Articles V and VII. Now, turning to paragraph (a) of Rule 45-A, General, providing for the establishment of the forty-hour week, this leaves no question that employees covered by Article VIII (Train Service Employees) and Article IX (Over-The-Road Truck Service Employees) are excepted from the provisions of the forty-hour week. We quote:

"The management will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in this rule, **and except those covered by Articles VIII and IX, a work week of 40 hours, * * ***" (Emphasis Supplied).

Train Service Employees covered by Article VIII, and Over-The-Road Truck Service Employees covered by Article IX, by express language are excepted from the provisions of the forty-hour week agreement. Train Service Employees, therefore, are subject only to the specific Article of the Agreement relating to train service, Article VIII, and such general rules of Articles I to IV inclusive, and Articles X to XII as may be applicable.

No provision is contained in Article VIII, applicable to Train Service Employees, such as contained in Article V, Rule 45-A (j) applicable to clerical and station forces relating to work on a day which is not a part of any assignment.

The contention of the Employees that Rule 45-A (j) applies to Train Service Employees as well as station forces is so obviously wrong as to admit of no other finding than that the claim of Messenger Horton for a trip on his layover day December 30, 1950, is entirely without merit and should be denied.

All evidence and data have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is that the agency violated the agreement through a run around on call of J. E. Horton to make trip on Burlington, Rock Island Trains Nos. 12 and 11, Houston-Waxahachie, Texas route, December 30, 1950, and that he shall be compensated in accordance with agreement rules for salary losses sustained as a result of not being assigned to the trip. Employee states that Rule 45A and Rule 65 have been violated by the agency.

J. E. Horton, with seniority date of March 7, 1917, was one of a pool of two messengers assigned to operate on Burlington, Rock Island trains 12 and 11, each working a round trip every other day. The regular messenger working opposite claimant was absent on December 30, 1950. This was Claimant's lay-over period; his next scheduled run was January 1, 1951. Furloughed messenger Guinn, with seniority date of July 3, 1945, was called to protect the open date of December 30, 1950.

The employees state that Guinn had, prior to this assignment, worked in excess of one hundred seventy (170) hours in the month of December, 1950, and when this work was given to him, it was in violation of Rule 45-A (j) and the seniority rights of the claimant. The Agency states that Guinn was the oldest available furloughed train service employee in the same seniority district and that he was called because the incumbent of that position had bid in another job. The Agency relies on Rule 19, Article II, pertinent parts of which read as follows:

"... Except in case of emergency such employees shall be given preference on a seniority basis to all extra or substitute work, temporary vacancies and vacancies occasioned by the filling of positions pending assignment by bulletin. . ."

There is no dispute between the parties that Guinn was the oldest available furloughed train service employe and after a careful reading of the docket and the rules cited by the Employes as having been violated by the Agency, it is our belief that Rule 19 governs this claim and that the Agency did not violate this rule. Therefore, the claim should be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the terms of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of February, 1953.