

Award No. 6083

Docket No. CLX-6111

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

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, Inc., and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at the Centralia, Missouri, Agency beginning July 23, 1951, when furloughed employee Henry Sander was denied the right to perform classified work in contravention of his seniority rights; and

(b) Sander shall be compensated for a minimum of 8 hours' pay daily at pro rata rate for July 23, 24 and 25, 1951, at \$259.97 basic per month.

EMPLOYEES' STATEMENT OF FACTS: Employee Henry Sander, with seniority dating from June 6, 1926, was, prior to July 21, 1951, the regular occupant of position 1, group 8, titled "Clerk-Vehicleman," hours of assignment 1:45 to 10:45 A.M., meal period 6:45 to 7:45 A.M., days of rest Saturday and Sunday, salary \$259.97 basic per month. July 17, 1951, abolishment notice No. 2 was issued, abolishing position 1, group 8, effective July 21, 1951, which was the last, classified position at Centralia, Missouri. As a result of the abolishment, Henry Sander became furloughed. July 21 and 22, 1951, were regularly-assigned rest days of position 1, group 8. However, Wabash Trains 14-9-10-33-35 continued to operate. In addition, Gulf, Mobile and Ohio Train 21 was re-routed to furnish express service to Centralia.

Agent Duncan, who is excepted from Agreement coverage and who possesses no seniority rights at the Centralia Agency, continued to operate the office for the convenience of the public, and to transfer express matter from main line to branch trains of the Wabash Railroad, and to perform such pick-up and delivery service as was necessary. July 23, 24 and 25, 1951, furloughed employee Sander was available for this work, but was denied the right to seek his seniority level and perform such work.

July 26, 1951, bulletin No. 2 was issued, re-establishing position 1, group 8, and effective that date, Sander was assigned thereto, pending award by

improperly abolished, and nothing in the Rules precludes the abolishment of positions not needed. None of the duties necessary to the conduct of the express business at Centralia was removed from the scope and operation of the Agreement during the three days covered by this claim, and during which the position of Clerk-Vehicleman was properly abolished. The Agent during that period merely continued to perform such duties as he regularly performed prior to the abolishment of the classified position, which duties all Agents at five-man or less offices perform and have regularly performed since August 1, 1937, when Note 1 to Rule 1 was added to the Rule recognizing the performance by Agents at five-man or less offices of regular routine agency work.

The claim that employe Henry Sander was denied the right to perform classified work and that he should be compensated for a minimum of eight hours' pay daily at pro rata rate for July 23, 24, 25, 1951, is entirely without merit and should be denied.

In denying an exactly similar claim involving the performance of routine agency work by the Agent at McGehee, Arkansas, a five-man or less office, Referee Adolph E. Wenke in Award 5699 said:

"There is nothing in the Agreement that prevented the Agency from rearranging the working schedules of its employes at McGehee except that it could not do so if the changes resulted in a violation of the Scope of its Agreement with the Brotherhood then in effect. This rearrangement resulted in the Agent at McGehee performing some duties which prior thereto the Clerk-Chauffeur on duty between the hours of 8:00 A. M. and 7:30 P. M. had been performing.

"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 violative of the agreement except as the parties in their agreement may otherwise provide.

"Under the factual situation existing at McGehee on June 10, 1949, Note 1 to Rule 1 of the parties' Agreement effective October 1, 1940 is applicable to the position of Agent at that point. This Note provides:

'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.'

"This Note specifically authorizes the Agency to have the Agent at McGehee regularly perform this routine agency work and no violation of the parties' Agreement results from his doing them."

Award 5699 is wholly determinative of the issue in the instant case.

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

(Exhibits not reproduced).

OPINION OF BOARD: There is in evidence an agreement between the parties bearing effective date of September 1, 1949. This claim states that at the Centralia Missouri Agency beginning July 23, 1951, furloughed employe Sander was denied the right to perform classified work in contravention of

his seniority rights and asks for a minimum of 8 hours' pay daily at pro rata rate for July 23, 24, 25, 1951 at \$259.97 basic per month.

This dispute arose due to the discontinuance of Wabash Railroad trains resulting from flood conditions. The position of Clerk-Vehicleman was filled by claimant and was abolished by notice dated July 17, 1951, effective July 21, 1951. Since Claimant had made previous arrangements to be absent on Saturday and Sunday, July 21 and 22, 1951 the claim is restricted to dates July 23, 24, 25, 1951. On July 26, 1951 Claimant was assigned to the new position pending expiration of bulletin period and assignment bulletin was issued on July 26, 1951. Claimant was assigned position after expiration of ten day bulletin period.

The Employees claim that the Agent performed all the classified work which was part of the assigned duties of the abolished position during the time of the abolishment of this position. That the Agent possessed no seniority rights at this station. That the Claimant with seniority date of June 6, 1926 became a furloughed employe and was denied the right to perform the classified work.

The Scope Rule of the effective Agreement provides as far as here material, as follows:

"Employees Affected—Rule 1. These rules shall govern the hours of service and working conditions of all employees in service of the Railway Express Agency in the United States subject to the exceptions noted below:

"Exceptions

"These rules shall not apply to—* * *

"(c) Agents (except Agents at one man offices) and their superiors in official rank."

The question before this Board is did Centralia, Missouri, under the claim presented, become a one man station? If it did then the position came within the Scope of the parties' Agreement and as the agent held no seniority at this agency, the Claimant had the right to displace the agent as he was the senior furloughed employe and had seniority rights. We find that this agency became a one man office during the dates set out in the claim when the position was abolished and that the Claimant should have displaced the Agent.

The Carrier's contention that Note to Rule 1 of the effective agreement is applicable to this claim is not well taken as it does not apply to one man stations as they come under the Scope Rule of the Agreement.

The claim for compensation for the three days July 23, 24, 25, 1951 is sustained at the pro rata rate.

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 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; and

That the Carrier violated the terms of the Agreement.

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AWARD

Claim sustained.

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.