

Award No. 6515
Docket No. CLX-6550

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, 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 Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at Havre, Montana September 16, 1951, when Messenger J. H. Dougherty was required to report for duty on Great Northern Railway Train 235, Butte-Havre, Montana Route one hour and five minutes in advance of his regular bulletined reporting time without being compensated therefor:

(b) That Messenger J. H. Dougherty be paid for a four-hour call for service performed in advance of his regular bulletined reporting time on September 16, 1951, and for subsequent dates until the condition has been corrected; and

(c) That other messengers assigned to operate on Great Northern Railway Trains 236 and 235 Butte-Havre, Montana Route, who were required to report in advance of their regular bulletined reporting time be paid for a four-hour call for each day required to so report.

EMPLOYEES' STATEMENT OF FACTS: J. H. Dougherty was one of a pool of four messengers regularly assigned to operate on Great Northern Railway Trains 236 and 235, Butte-Havre, Montana Route, home terminal, Butte, away from home terminal, Havre. Salary \$33.90 per month, scheduled to operate as follows:

Report Butte for Tr. 236	11:45 A. M.	Depart	12:25 P. M.
Arrive Havre Tr. 236	9:55 P. M.	Release	10:15 P. M.
Report Havre for Tr. 235	7:45 A. M.	Depart	8:20 A. M.
Arrive Butte Tr. 235	5:20 P. M.	Release	6:00 P. M.

A copy of Bulletin No. 20-B, dated June 29, 1951, covering the scheduled operation is attached. (Exhibit A).

It is clearly evident that Employees' contentions in the instant dispute are predicated on an attempt to interpret "fixed" starting time, in Rule 52 and the Memorandum of Understanding dated November 22, 1932, as "uniform" starting time. Such interpretation is not correct nor in keeping with the intention of the parties in writing the Rule and the Understanding subsequently agreed upon, permitting flexibility in the designation of starting times to meet the requirements of the service with respect to Agency employees and specifically excepting train service from its application.

In the field, Employees cited Decisions E-217, E-1080 and E-1209 of Express Board of Adjustment No. 1 in support of their claim, but a review of same fails to develop the relevancy of those decisions to the facts in the instant case.

In conclusion, Carrier submits that:

1. The exception of train service from the provisions of Rule 52 clearly indicates that such assignments do not have to have a uniform reporting time on each day of service as contended for by the Employees.

2. The agreed upon interpretation of Rule 52 contained in the Memorandum of Understanding dated November 22, 1932, emphasizes this exception.

3. The Memorandum by its language clearly indicates that Rule 52 applies specifically to agency employees as distinguished from train service employees, but even as to agency employees holds that "fixed" starting time does not contemplate a "uniform" starting time each day of service, in that it is recognized and agreed that as to those employees variations of not to exceed two hours per day and for not to exceed two days in a calendar week may be made by proper notice in the fixed and uniform starting time of positions for the remaining days of the calendar week.

Employees' claim is not supported by the facts and circumstances in the instant case, nor is it supported by the rules, and interpretations of those rules set forth by Carrier, and should be denied in its entirety.

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

(Exhibits not reproduced).

OPINION OF BOARD: This dispute relates to the reporting time for Messengers used on the Great Northern Train No. 235 out of Havre, Montana which prior to September 16, 1951 was at 7:45 A.M. daily. At the time of this dispute Carrier maintained in the Montana Seniority District a pool of four messengers operating trains 236 and 235, Butte-Havre, Montana Route. The operating schedule is stated in Bulletin No. 20-B requiring these messengers when working on train 235 to report at Havre at 7:45 A.M. on all days of the week. On Sundays no day shift was maintained and on that day money and value shipments were turned over to the Messengers by a Relief Clerk-Express Handler with a 9:50 P.M. to 6:50 A.M. assignment. This necessitated holding that employee an additional hour at overtime rate in order that he be on duty when the Messenger for train 235 came on duty at 7:45 A.M. on Sundays.

On September 7, 1951, Respondent issued Bulletin No. 30-B which reads as follows:

"Montana Seniority District:

Messengers: Butte-Havre Route
GN Trs. 236-235

Effective September 16, 1951, Messengers will report for GN Tr. 235 at Havre each Sunday at 6:40 A.M.

Messengers will continue to report at 7:45 A. M. for this train on all other days of the week.

/s/ J. E. Hore,
Superintendent"

As a result of this change in time required to report for duty, on October 4, 1951, Petitioners' General Chairman filed claims for a "call" for each Sunday a Messenger was required to report at 6:40 A. M.; contending that the required reporting time being advanced one hour and five minutes entitled Claimants on this day (Sunday) to a minimum four-hour call.

The record shows that the parties are in accord as to the method of payment of these messengers as being on a monthly basis, that is, Claimants received \$333.90 for a basic month of 170 hours, paid under Rules 65, 67, 72 and 73 which determine the rate and conditions relative to the same. Also it is agreed that Claimants during October 1951, the first full month of service after the Sunday work period was changed, did not work 170 hours each.

The respective positions of the parties in brief is as follows: Petitioner contends that Decisions E-217, E-1080 and E-1209 of Express Board of Adjustment No. 1 are directly in point, citing from E-217, in part, as follows:

"After consideration, the Board is of opinion that the credit for one hours service time allowed this employe was improper under the Rules and directs that settlement be made on a call time basis for the period December 14 to December 23, 1934, inclusive, for each day the employe was required to report one hour in advance of his regular reporting time."

Respondent's position is that Petitioner can cite no rule in the current Agreement on which to bottom this claim. Also that the inapplicability of Decisions E-217, E-1080 and E-1209 is apparent for in each instance Messengers were temporarily required to report in advance of their scheduled starting time. That in this dispute Claimants had been apprised of a permanent change in their scheduled starting time by timely notice. And citing Rule 67, as follows:

"Train service employes covered by Rules 65 and 66 shall be paid overtime on the actual minute basis for all time on duty each month in excess of one hundred and seventy (170) hours at pro rata rate, which shall be determined by dividing the monthly wage by one hundred and seventy (170). Time in excess of one hundred and ninety (190) hours shall be paid for at the rate of time and one-half times the hourly rate. Overtime shall be paid for at the end of each month."

This Division is of the opinion that the position taken by the Respondent is the correct solution of this dispute. The Agreement by specific rules spells out the method of payment for these employes, Claimants herein. Timely notice was given of the change in starting time and the record shows that none of the four messengers involved worked a sufficient number of hours to qualify for overtime during the period of time in question as per Rule 67. In such a situation the Call Rule does not apply.

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 Agreement was not violated.

AWARD

Claim denied in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of March, 1954.