

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 the Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949 was violated in the Washington Alaska Yukon Train Service Employees' Seniority District through failure to compensate properly Messenger R. A. Moore for work performed on Northern Pacific Railway Train 4 East Auburn, Wash. to Spokane, Wash. December 12, 1951 and Northern Pacific Train 5 Spokane, Wash. to Seattle, Wash. December 13, 1951; and

(b) He shall now be paid the difference between what he was paid for the assignment in question and the amount he should have been paid.

EMPLOYEES' STATEMENT OF FACTS: R. A. Moore, with a seniority date of May 7, 1940, is a furloughed employee in the Washington Alaska Yukon Train Service Employees' Seniority District and was available for extra, substitute or relief train service work. December 10, 1951 he was called for messenger service on the advance section of Northern Pacific Railway Train 2 operating between Seattle-Spokane, Wash. He reported at Seattle (home terminal) at 7:00 P. M. December 10, 1951 and was released at Spokane at 8:30 A. M. December 11, 1951. For this service he was compensated at Messenger's rate of \$351.65 per month.

December 11, 1951, Moore reported at Spokane as instructed at 6:15 P. M. to return to Seattle in deadhead service on N. P. Train 1. However, he did not complete the trip to Seattle. When he arrived at East Auburn, Wash. (an intermediate station 23 miles east of Seattle) at 7:35 A. M. December 12 he was instructed to transfer to and return to Spokane as Messenger Helper on N. P. Train 4. He accordingly followed instructions and (without release at East Auburn) assumed the duties of Helper on Train 4 at 7:35 A. M. and was released at Spokane at 10:40 P. M. December 12. Moore was compensated at the Messenger rate of \$351.65 for the working trip between Seattle and Spokane and for the deadhead trip Spokane to East Auburn—Rule 65—however for the trip East Auburn to Spokane he was paid at the

service on Trains 2-3, Seattle-Spokane Route. On the outward trip on Train 2 they were paid as Messengers, but on the return trip on Train 3 they were used as Helpers and paid at Helper rate. The service performed was confined to the scheduled termini of a single run and set of trains, not on two runs and different sets of trains as in the present case. While no reason for his decision is expressed by the Referee in Decision E-390, he apparently agreed that inasmuch as the initial assignment was that of Messenger, the claimants were entitled to the Messenger rate on the same return assignment, since even if the employees had deadheaded on the return trip in such circumstances they would have been paid at Messenger rate.

Employees have completely failed to support their claim under the rules or precedent decisions relied upon, and it should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. In brief, R. A. Moore, seniority date May 7, 1940, furloughed employee, was available for extra, substitute or relief train service, on December 10, 1951, and he was called to work messenger service from Seattle, Washington to Spokane, Washington.

Petitioner contends as he was called from his home terminal (Seattle) and at the end of this trip was instructed to return to Seattle in deadhead service on N. P. Train No. 1 on December 11, but that he was not permitted to reach Seattle as upon arrival at East Auburn, Washington, he was instructed to leave Train No. 1 and transfer to N. P. Train No. 4 and return to Spokane as Helper. Therefore, he was not released at East Auburn, but was released at Spokane on December 12, 1951, at 10:40 P.M., not his home terminal, and instructed to return to Seattle as Helper on N. P. Train No. 5 on December 13, being released at Seattle at 6:55 P.M. on that date. Cited with other rules is Rule 74 (a) which provides:

"Relief, Substitute and Extra Train Service.

"(a) Relief and substitute employees shall be paid for service performed on the same basis as regularly assigned employees. Extra employees shall be paid for service performed on the same basis as regularly assigned employees, provided, however, that not less than eight (8) hours shall be paid for any one trip."

Also cited is Rule 65 which provides in part:

"* * * A trip is defined as service beginning with time required to report for duty until released at bulletined terminal. * * *"

and that he is to be paid the rate of pay governing the character of work to which he was originally assigned until returned to his home terminal. In this case East Auburn is not a terminal and therefore Claimant is entitled to the messenger rate of pay until he was returned to his home terminal and released.

Respondent Carrier contends that no extra board was established as per Rule 74 (c) and Claimant was used in extra service in accordance with rules of the Agreement, citing Rules 65 and 74. That if an extra man is working strictly extra and not in the stead of a regularly assigned man he is not subject to the basic monthly hour provisions contained in Rule 65, but is compensated for the total hours consumed on each trip, with a minimum of eight (8) hours, at pro rate. There were no bulletined regularly scheduled assignments for messenger service on December 10, 1951, on advance N. P. Train 2, nor for Helper service on Train 4, December 12, East Auburn to Spokane, or Train 5, December 13, 1951, Spokane to Seattle,

hence there were no bulletined terminals for those assignments. Here Claimant was afforded the opportunity to make himself available for extra work at East Auburn and his acceptance of the assignment on Train 4 was the equivalent of terminating his deadhead trip on Train 1, since there is no requirement for an interval of release between two extra trips.

Rule 80 provides:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

And as cited above Rule 74 (a) provides in part:

"* * * Extra employees shall be paid for service performed on the same basis as regularly assigned employees, * * *."

Rule 80 makes no reference to positions which are bulletined and assigned but refers to employees and under the facts and rules applying to this situation, we are of the opinion that as Claimant started this assignment at Seattle and the Carrier apparently by the action taken in deadheading him back to that terminal at the conclusion of the original assignment in messenger service considered Seattle to be the terminal to which he should be returned, thus placing an interpretation on that phase of the matter. It is construed that Seattle is the proper designated terminal destination for Claimant under facts presented. And that as he did not reach the terminal but was given an assignment prior to reaching Seattle, as a Helper and returned to Spokane, that a proper interpretation of the rules cited leads to the conclusion that he is entitled to the Messenger rate or higher rate of pay until released at Seattle.

Therefore, Claims (a) and (b) are sustained.

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 Claims (a) and (b) are sustained in accordance with Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.