Award No. 6754

Docket No. CLX-6783

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, 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 Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949, was violated at Ellensburg, Washington, Glasgow and Harlowton, Montana, Coeur d'Alene and Wallace, Idaho, Bend, Hood River, Huntington and McMinnville, Oregon Agencies, August 1, 1952 when the basic monthly salary rate of the position of Agent was reduced in the amount of $3.51 per month; and

(b) That the basic monthly salary rate for the position of Agent at the Agencies named shall be restored to the rate in effect July 31, 1952 and the occupant thereof, adversely affected shall be compensated for the difference in salary and earnings loss sustained retroactive to and including August 1, 1952.

EMPLOYES' STATEMENT OF FACTS: The Agency at Ellensburg, Washington became a one-man office July 10, 1950 when the last full time classified position was abolished, leaving the Agent as the occupant of the only full opportunity position at the Agency and as such the position became subject to the Agreement between the parties automatically.

Other Agencies became one-man offices when the last full time classified positions were abolished as follows:

Glasgow, Montana	August 3, 1950
Harlowton, Montana	June 6, 1951
Coeur d'Alene, Idaho	March 13, 1950
Wallace, Idaho	June 21, 1949
Bend, Oregon	July 1, 1950

position as it would rate a new position in classified service under Rule 82, which, if done, would have resulted in a lower rate based upon comparison of classified positions. It did not do so, however, but chose to rate the positions at the equivalent of the excepted rates in the manner described above.

Employes allege violation of Rules 79, 79-A and 80 of the current Agreement effective September 1, 1949, but the demand here is one in fact in which the Employes are seeking to have the Board fix rates of pay, a duty and responsibility with which the Board is not in position to undertake under the law.

Rule 79 has not been violated. That rule provides that positions, not employes, shall be rated, and the transfer of rates from one position to another shall not be permitted. Rule 79 has, in fact, been complied with in that the classified "positions" have been rated, not the "employes" who were formerly excepted. Rule 79-A has not been violated since no established positions coming under the Agreement have been discontinued and new ones created for the purpose of reducing the rate of pay or avoiding the application of the rules. The positions now classified have been brought under all of the rules including Hours of Service and Meal Period, Article V of the Agreement; Overtime and Calls, Article VI, and Sunday and Holiday Work, Article VII, as well as the Seniority and Rating provisions of the Agreement, and it may not be successfully contended that their rates of pay have been reduced for the purpose of evading the application of the rules. Rule 80 has not been violated since obviously there has been no transfer either temporarily or permanently of these employes to higher or lower rated positions.

Employes completely fail to support their allegation that the action on the part of the Carrier in re-adjusting the rates of pay of these positions constitutes a violation of the Rules cited by them. They have not alleged failure of Carrier to rate the positions properly in their transition from excepted to classified. They are seeking an increase in rates of pay of such positions which removes the dispute from the realm of grievances arising out of the interpretation or application of agreements concerning rates of pay, rules or working conditions (Sec. 3, First (i), Railway Labor Act, as Amended) and brings the issue within the scope of Sec. 6 respecting changes in agreements affecting rates of pay, not within the authority of the National Railroad Adjustment Board to consider.

The claim is wholly without merit and should be dismissed for reasons pointed out above.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Under the provisions of Rule 1 (c) of the current Agreement, effective September 1, 1949, agents at one man offices are covered by such Collective Bargaining Agreement, all other agents and their superiors in official rank being excepted from its terms. In the application of such rule it follows that when, through diminution of forces, a position of agent at any offices or station becomes the only job remaining at that point such position, even though theretofore outside its scope, acquires the status of a one man office and the occupant thereof is automatically subject to all provisions of the existing Agreement.

By a Wage Agreement, effective February 1, 1951, the parties made provision for wage increases on the property, comparable to other recognized National Wage Agreement. Article II (c) of this Agreement is important to the issues here involved and, so far as pertinent, reads:

> "(c) Wage rates in effect February 1, 1951 will not be reduced during the life of this agreement. However such rates are subject

to a cost-of-living adjustment in accordance with the following table; . . ."

The parties agree, as well they may (see Award 5698), that prior to August 4, 1950, all offices listed in the claim, except the agencies at Ellensburg, Washington, and Harlowton, Montana, became "one man offices" within the meaning of that term as used in Rule 1 (c), **supra**. It is also conceded that Ellensburg became such an office on July 10, 1950, and Harlowton acquired a like status on June 6, 1951.

Other controlling facts disclosed by the record are not in controversy and can be stated thus:

Following the effective date of the Wage Agreement last above mentioned the Carrier made diverse changes in wage increases of employes covered by the terms of the Collective Bargaining Agreement. Obviously, in an attempt to comply with the spirit of the Wage Agreement, it made comparable changes in the rates of pay of the involved positions, although at that time it had refused to recognize any of them as one man offices, covered by the terms of the Collective Bargaining Agreement. These changes in rates of pay, it may be added, were predicated on the previously existing excepted rates of such positions and made on the basis of flat monthly increases.

Immediately prior to August 1, 1952, all positions in question were being paid a monthly rate of $365.00. Effective as of such date Carrier, without negotiation or attempted agreement, unilaterally made a reduction in the rate of pay of each such position amounting to $3.51 per month. When interrogated as to the reason for this action it replied, through its Superintendent, that such positions came under a classification category on August 1, 1952. The instant claim, progressed and declined on the property through proper channels followed.

Nothing would be gained and we are not disposed to here detail the intricate and somewhat abstruse arguments advanced by the Carrier as affording grounds for its action in reducing the rates in question. It suffices to say that all involved positions, except the agency at Harlowton, had become and were one man offices long prior to February 1, 1951, the date on which Carrier, under the heretofore quoted section of the Wage Agreement, had agreed that wage rates in effect February 1, 1951, would not be reduced during the life of such Agreement. Moreover, it is clear that on such date, except for the one position just noted, wage rates were in force and effect for all such positions, even though Carrier was erroneously assuming they were not one man offices and hence not covered by the Collective Bargaining Agreement then in force and effect. Under these circumstances, we are convinced a conclusion the Wage Agreement precluded a change in the then existing rates of such positions without negotiation and agreement is not only proper but becomes inescapable.

It must be conceded the question whether Carrier's attempted reclassification of the rate of the Harlowton office, established on June 6, 1951, presents a somewhat different question. Even so, when limited strictly to the facts and circumstances of the present case, we do not believe it could establish a rate as of that date for what it then erroneously considered an excepted position and now be heard to say that because of discovery of its error that position became subject to reclassification for purposes of affecting a wage reduction some two years later, i.e., on August 1, 1952.

We are cited to and know of no Awards requiring or even permitting conclusions contrary to those heretofore announced under the facts of record. Award No. 4087, on which the Carrier places considerable weight, is wholly dissimilar from the standpoint of facts and principles involved and therefore is not to be regarded as a controlling precedent or as lending support to its position.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Carrier erroneously reduced the basic monthly salary rate for the position of agent of the agencies named and described in the claim.

AWARD

Claim sustained in its entirety as to all agencies involved except the Huntington, Oregon, office. As to such agency it is limited to July 15, 1953, since that office was discontinued on such date.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1954.