

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 Employees, effective September 1, 1949, was violated in the California-Nevada Seniority District at Grass Valley, California Terminal, July 6, 1951 when Carrier failed to call and assign extra train service employee E. A. Carson of the Sacramento Joint Extra Messengers Bid Board for a guard trip, Grass Valley-Sacramento, California route and on subsequent dates in giving a run-around on call to Carson and other train service employees, whose names appear on the Extra Messengers Bid Board in the order of their seniority and availability for guard trip or trips made by Agent J. Henwood;

(b) He and the other train service employees in the order of their seniority and availability shall now be compensated for wage losses sustained retroactive to and including July 6, 1951; and

(c) Carrier shall now be required to make a joint check of the number of guard trips made on the Grass Valley-Sacramento, California route, by Agent J. Henwood retroactive to and including July 6, 1951; said check to include identification of the train service employees available for such service during the period this agreement violation exists.

EMPLOYEES' STATEMENT OF FACTS: E. A. Carson, with a seniority date of July 20, 1945, held a regular assignment as extra messenger on the Sacramento Joint Extra Messengers' Bid Board covering the Central California and Northern California-Nevada-Oregon Division. This board operates on a "first in first out" basis, protecting runs assigned to the Board. Guard service at Grass Valley, California is work assigned to the Board.

June 21, 1951, Superintendent G. H. Graham wrote a joint letter to the General Agent at Sacramento, California and Agents at Colfax, Grass Valley and Nevada City, California, instructing them that effective July 2, 1951 express traffic consigned to Grass Valley and Nevada City would be handled

to work throughout the District except that there was no relief available or could be made available."

In the instant case it is not only impossible to notify employes on the Sacramento Extra Board that Guard service is available at Grass Valley, but likewise impossible for such employes to make themselves available in time to protect the service after Carrier is advised of the movement of the traffic.

The claim in the instant case is wholly unsupported under the facts, rules and citations offered by Carrier, and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is lengthy and is set forth at length in preceding portions of the record. On that account it will not be repeated.

The historical facts are not in conflict and will be stated in accord with our version of their import as disclosed by the record.

Carrier maintains an office at Grass Valley, California, where, among other things, it receives gold bullion. About 1942 rail or train service in and out of that point was abandoned but prior thereto shipments of that character were handled by its train service employes. It is not clear what class of employes handled such shipments thereafter but it can be stated they were transported by some means other than rail from Grass Valley to Colfax, where they were turned over to the Messenger on Train No. 23 and then transported by rail to Sacramento or other designated points.

Sometime in the spring of June 1951 the Carrier decided to make a change in its procedure of handling gold bullion shipments at Grass Valley and Nevada City, a point not here involved. On June 21, 1951, it issued written instructions to the agents at those two points which, for purposes pertinent to the decisive issues, i.e., shipments of currency, bullion and other treasure requiring services of an armed guard, read:

"Effective July 2, 1951 express traffic consigned to Grass Valley and Nevada City will be handled in P.M.T. (truck) service to and from Sacramento . . .

"As information to the Agents at Grass Valley and Nevada City, the following changes in the procedure of handling treasure between Grass Valley and for Nevada City and San Francisco via Sacramento will be made . . .

"4. Currency and other treasure valued at over \$25,000 to be accompanied by one armed guard.

"5. Bullion and concentrates valued at over \$50,000 to be accompanied by one armed guard.

"Mr. Henwood at Grass Valley will please arrange to accompany shipments as outlined in items 4 and 5 above Sacramento only as no guard will be needed beyond Sacramento and will give Sacramento advance information as to the movement of these shipments."

Following the effective date of the instructions above quoted the Carrier commenced to ship gold bullion from Grass Valley under the conditions therein indicated, the date of the first shipment being July 6, 1951, and has since transported shipments offered and accepted in like manner under guard of J. Henwood, the Agent at such point.

On the date of the issuance of the foregoing instructions, and for that matter on all dates herein involved, the parties had entered into certain agreements which were then, and now are in full force and effect. These arrangements contain provisions important to the issues and some of them should be detailed.

Rule 1 of the current Agreement, effective September 1, 1949, is what is known as the scope rule of the Agreement. In a general way it can be said to be in such form it controls the disposition of work available to the class of employees therein described, excluding certain employees excepted from its terms. Among the employees so excepted by subsection (c) of the Rule are "Agents (except Agents at one man offices) and their superiors in official rank."

Rule 74 relates to relief, substitute and extra train service and subsections (c) and (d) thereof are important. They read:

"(c) Extra Boards may be established by agreement, and if established, the duly accredited representative and the Superintendents will establish rules governing the working of same.

"(d) Train service employees shall be used to perform all extra, substitute or relief train service work except that in cases of emergency where no extra train service employees are available, other employees may be used to perform such work and shall be paid in accordance with the provisions of these rules covering train service employees. They shall be paid at their own rate of pay for such service if it is higher than the rate of work performed."

Before turning to another contract between the parties, we pause to note and point out, that resort to their wage agreements, effective as far back as August 1, 1937, discloses provisions identical to those heretofore quoted.

On June 21, 1949, shortly prior to the execution of the 1949 wage agreement and while an earlier agreement, containing provisions as just stated, was still in force and effect, the parties, as authorized by the terms of all such agreements, entered into an agreement entitled "Rules to govern operation of joint extra messenger bid board at Sacramento, California—covering the Central California and Northern California-Nevada-Oregon Divisions." Aside from stating positions on the bid board we were governed by existing seniority rules one sentence of Rule 1 (a) of this last mentioned agreement is important in that it has to do with the very question here involved. It reads:

". . . All extra, substitute and relief work at Sacramento, guard service at Grass Valley and Reno-Mina route will be performed from the Sacramento board . . ."

For a like reason Rule 7 (b) of the same agreement is also important. It reads:

"Deadhead hours authorized will be paid for as service time at rate of run relieved. Extra board messengers departing from Sacramento to protect an assignment at Grass Valley, Reno-Mina Route, or elsewhere will be credited with authorized deadhead hours and be furnished transportation both ways."

Before turning to the merits it should be said at the outset that for reasons to be presently disclosed we are not required, and hence not disposed, to labor devious contentions based in the main on bald conclusions and certainly unsupported by evidence of much probative value advanced by the parties respecting whether (1) the Agent at Grass Valley was excepted from coverage under the terms of the current Agreement; (2) train service em-

ployes or agency employees guarded shipments of the character here involved from Grass Valley to Colfax from 1942 to the date when the Organization filed its claim on the property and thus directed attention to the fact it was claiming the procedure inaugurated under the instructions of June 21, 1951, was in violation of existing Agreements; (3) past practice might be entitled to weight under certain circumstances; and (4) the current Wage Agreement, standing alone, and in and of itself, would have required Carrier to give train service employees the guard work necessary on truck shipments to originating at Grass Valley.

Still approaching consideration of the merits it must be remembered the record makes it clear that in progressing the claim on the property, in fact right down to the very moment of its final declination by its highest designated reviewing officer, Carrier conceded that the guard service work at Grass Valley was train service employees' work to which they would have been entitled, and had a fixed right, under existing agreements except for two reasons. These, it may be added, were spelled out in the last two communications made by the Carrier's General Manager in declining the claim. Beyond all question of doubt, resort to such communications makes it equally clear that the grounds relied on for declination of the claim were: First, that Carrier was faced with an emergency, hence it was warranted in assigning the work in question to employees other than train service employees. Second, that the existing agreements required that train service employees make themselves available at Grass Valley when shipments requiring guard service were offered at that point.

Thus, stripped of all excess verbiage and disregarding tortured arguments on matters of no consequence under the facts of record, the two all decisive and controlling issues before us become obvious. Succinctly stated they are: First, do the Rules of existing Agreements require that train service employees keep themselves available for guard service at Grass Valley at the moment shipments of the type here involved are offered at that point or is there a joint responsibility resting on employees and Carrier to make such employees available at that point under the existing conditions; Second, was Carrier confronted with an emergency warranting its action in taking the involved work from employees entitled thereto and then giving it to others?

Touching the first question it must be kept in mind that all existing agreements between the parties must be read together and given full force and effect. When that is done we have no difficulty in concluding that the provisions of Rule 1 (a) of the Bid Board Agreement, when read in connection with the provisions of Rule 7 (b), heretofore quoted, fix certain joint and mutual responsibilities on the parties so far as availability for guard service as Grass Valley is concerned. Such agreement, it must be remembered, was in full force and effect prior to execution of the present Wage Agreement which, as we have heretofore pointed out, did not change heretofore existing and like provisions of previous Agreements of that nature. In such a situation the provisions of the Bid Board Agreement must prevail and, as we have just indicated, require a negative answer to the first question as heretofore stated.

Carrier's position on the second question raises a far more serious question. It must be admitted it was confronted with a situation requiring action within a period of two or three weeks' time if it was to retain some, if not all, of the shipments in question. Be that as it may, it had entered into an agreement wherein it had contracted all guard service at Grass Valley to train service employees. Likewise, it must be remembered, it had at least the period of time heretofore indicated to work out some sort of an arrangement by negotiation or otherwise. Faced with that situation we think it was its duty to make some effort to do so, rather than to issue the unilateral instructions heretofore mentioned and thereafter take the work from those to whom it here recognizes it belonged in the first instance. In any event, and without taking the time or space to cite supporting decisions,

we are convinced the confronting facts and circumstances do not disclose the kind of an emergency recognized by our Awards as warranting a temporary disregard of an agreement requiring that the work in question be assigned to train service employees. It follows the second and final reason assigned and relied on by Carrier as grounds for denial of the claim cannot be upheld.

Based on what has been heretofore stated we have no alternative and must sustain the claim. The province of this Board is to interpret not rewrite Agreements for the parties. This, we may add, is true even though its construction of what they have agreed upon sometimes necessarily results in what may seem to be a harsh decision.

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 violated.

AWARD

Claim sustained as per Opinion and Findings.

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.