Award No. 6867
Docket No. CLX-6850

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 in the Pacific Northwest Division when, effective August 6, 1952, a pool of five messenger positions assigned to operate on Southern Pacific Trains 329 and 330, Portland-Ashland, Oregon Route, was discontinued and a pool of four messenger positions established with schedule hours in excess of one hundred seventy (170) hours per month;

(b) The pool of five messenger positions shall be re-established; and

(c) J. L. Fuller and all other messengers adversely affected as a result of Carrier's action shall now be compensated for all monetary losses sustained retroactive to and including August 6, 1952.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949 a basic month's work for train service employes was one hundred ninety (190) hours. At that time the Portland-Ashland, Oregon Route, Southern Pacific Trains 329 and 330 was operated by five messengers in daily service between the terminals mentioned. Effective September 1, 1949 the basic month's work for train service employes was reduced to one hundred seventy (170) hours. The Portland-Ashland Route continued to operate with five messengers, but service was reduced from daily to daily except Saturday nights from Portland on Train 329 and Sunday nights from Ashland on Train 330.

February 1, 1952, Notice No. 2-A was posted, advising that effective 12:01 A. M. February 9, 1952, the Portland-Ashland Route, S. P. Trains 329 and 330 would be discontinued. Employes affected were J. L. Fuller, J. A. Beeson, R. W. Wood, W. L. Robillard and E. E. Wilks. (Employes' Exhibit A)

February 10, 1952 Bulletin No. 8 was posted advertising the Portland-Ashland Route for bid for four messenger positions, service to be daily except Friday and Saturday nights from Portland on Train 329 and Saturday

that such schedules were in violation of the rules. The records of Express Board of Adjustment No. 1 are replete with citations of scheduled hours in excess of 190. The records of this Division also will disclose many instances in which schedules in excess of the basic hours provided in Rule 65 were cited by Employes without the slightest thought or suggestion that such schedules were in violation of the rules, e.g., Award 5319, schedules of 211 and 204 hours; Award 5320, 204 hours; Award 5321, 211 hours, see also Awards 5322, 5323 and 5753. The schedules in the cases covered by these Decisions and Awards clearly indicate recognition on the part of the Employes that such schedules were proper and in accordance with all rules of the Agreement and past practices going back to the first Agreement effective February 15, 1920, and even before that under the Orders and Supplements cited by Carrier issued by the Director General of Railroads in 1919.

No changes in rules or practices have occurred throughout all of that period lending support to the claim here advanced that Rule 65 or any other rule of the Agreement between the parties prevents the scheduling of regular assignments in train service in excess of 170 hours per month, and that the theory advanced in this case that such schedules in excess of 170 hours nullify the provisions of the forty-hour week agreement was definitely set at rest by the Emergency Board in NMB Case A-3006 and Award 6081 of this Division in which this theory was propounded for the first time without success. A denial award is in order under the facts, rules, practices and Awards cited by Carrier.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on the premise the Agency violated the Agreement when effective August 6, 1952, it discontinued a pool of five Messenger positions on certain Southern Pacific trains and substituted a pool of four Messenger positions on such trains. It is claimed the Agreement was violated because the substituted four Messenger positions have schedule hours in excess of 170 hours per month.

Highly summarized, the facts giving rise to the dispute, and essential to a proper understanding of the issues, are not in controversy and can be stated in the following manner:

Prior to September 1, 1949, on the Messenger runs involved the basic monthly assignment for Train Service Employes, under Rule 65, Article 8, of the Agreement then in force and effect, was 190 hours or less on runs in regular assignments. In a new Agreement, now current, as of the date above mentioned, under the same Rule and Article, the basic monthly assignment for all employes in Train Service, including these Messengers, was reduced from 190 to 170 hours or less.

Prior to September 1, 1949, daily service was maintained on the involved Southern Pacific trains by a pool or group of five Messengers. As of that date Messenger service was reduced from a daily basis to a daily except Saturday night on one train and Sunday on another. On February 10, 1952, the Messenger service was further reduced to daily except Friday and Saturday nights on one train and Saturday and Sunday nights on the other and the Messenger pool was reduced from five men to four. Thereafter service was maintained in this manner until March 1, 1952, when it was restored to daily except Saturday night on one train and Sunday night on the other with a pool of five Messenger positions. This service was continued until August 6, 1952, when the number of positions in the pool was again reduced from five to four with the result that thereafter the four Messenger positions in the pool had scheduled hours in excess of 170 hours, hence this dispute.

The Organization contends that the reducing of the involved Messenger pool from a five to a four man pool with scheduled hours in excess of 170

hours per month resulted in a violation of Rule 65, Article VIII of the current Agreement which, so far as here pertinent, reads:

> "Month's Assignment—Straight-Away Service—Rule 65. For all employes in train service (except those in short turn-around service as defined in Rule 66), one hundred and seventy (170) hours or less on runs in regular assignment shall constitute a basic month's work. Deadhead hours authorized will be counted as service time.
>
> "* * *.
>
> "NOTE: Basic monthly rates of pay now in effect shall not be reduced in the re-arrangement, re-assignment or re-scheduling of train service positions made necessary to comply with the intent of this rule."

It also contends that discontinuance of the five positions and substituting four positions in lieu thereof was improper and in violation of Rule 79-A, Article 11, which reads:

> "Established Positions—Rule 79-A. Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work which will have the effect of reducing the rate of pay or evading the application of these rules."

In connection with its position the Organization contends that Rule 65, in and of itself, prohibits assignments with hours in excess of 170 hours per month. The Board is unable to find anything in the language of such Rule which warrants or permits that construction and adheres to the view that the proper construction to be given its terms is that it is a guarantee Rule, containing no prohibition against the setting up of regular assignments in excess of 170 hours.

The Organization further contends there is nothing in the Agreement which permits the action taken by the Carrier, as heretofore related, and that therefore that action must be held to have been taken in violation of Rule 79-A. Let us see.

Rule 67, Article VIII, reads:

> "Overtime Rate—Rule 67. 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."

While Rule 68, Article VIII, provides:

> "Assignment and Adjustment—Rule 68. Each train service position shall have not more than one (1) home, and not more than one (1) away-from-home terminal, both of which shall be established and designated on bulletin. Nothing in these rules is understood to prevent the Management from re-arranging train service positions to meet the needs of the business, provided that re-arranged runs as established shall be paid the rates of pay and overtime in accordance with all rules of this Agreement.
>
> "In re-arranging train service positions it shall be understood that established runs as re-arranged shall be re-bulletined if such re-arrangement involves one or more of the following changes:

"(a) Change of terminal.

"(b) Addition or elimination of train.

"(c) Number of employes in pool or group increased or decreased.

"(d) Exclusive service made joint or vice versa."

One of the well-established rules of contractual construction is that when clear and unequivocal the terms of an Agreement must be given their plain, ordinary and everyday meaning. Applying this principle to Rule 68, as quoted, compels the conclusion the parties themselves have agreed, in language which is susceptible of but one construction, that the Agency may rearrange train service positions to meet the needs of the business, provided the rearranged runs as established shall be paid the rates of pay and overtime in accordance with all Rules of the Agreement; and that a change in the number of employes in a pool or group is contemplated and permitted in making the rearrangement. It may be conceded the language of Rule 67, dealing with overtime pay for hours in excess of 170 and 190, which we pause to note applies to Train Service employes covered by Rule 65, is not so clear on the particular point in controversy. Nevertheless resort thereto leads to the inescapable conclusion that the parties in incorporating such rule in the Agreement definitely contemplated Train Service employes on runs in regular assignments might be assigned and paid for hours in excess of 170, provided they were paid overtime—as is here conceded—for such excess hours at the rate therein specified.

Nothing would be gained by detailed analysis of the extended arguments made by representatives of the parties in support of their respective positions, all of which have been given considered attention. It suffices to say, that with the rules of the Agreement construed as herein indicated, we are convinced that the parties themselves must be regarded as having agreed to the involved rearrangement of train service forces; and that Rule 79-A has no application under the confronting facts and circumstances. This, of course, means that the Agency did not violate the Agreement in making such rearrangement and that if the Organization desires to change or modify the existing Rules with respect thereto it must resort to negotiation, resulting in further agreement.

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 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 Agency did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.