

Award No. 8062

Docket No. CLX-7721

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy—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 at the Whitefish, Montana Terminal through a run-around on call of R. O. Larson to make a guard trip on G. N. Ry. Train No. 1 Whitefish, Montana-Spokane, Washington Route, May 7, 1954; and

(b) He shall now be compensated, in accordance with agreement rules, for the guard trip in question (May 7) and return in deadhead service Spokane-Whitefish on G. N. Train No. 4 May 8, 1954.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 1, 1918 express service on the railroads of the United States was conducted by seven independent express companies viz.; Adams, American, Great Northern, Northern, Southern Wells Fargo and Western. Effective July 1, 1918, by order of the Director General of Railroads, all of these independent express companies were consolidated into one nationwide operating company, known as the American Railway Express Company. As a result of this consolidation it became necessary to set up or create various operating departments or divisions for the purpose of continuing the conduct of express transportation. Applicable to the claim at issue, two Superintendents Divisions were created. The Washington-Alaska-Yukon Division, with headquarters at Seattle, Washington was given control of all train service operations on lines of the Great Northern Railway west of Spokane, Washington and one set of G. N. Trains, identified as 28 and 27, operating between Spokane, Washington and Whitefish, Montana; the Montana Division was given control of all train service operations on lines of the G. N. Ry. east of Spokane, with the exception of Trains 28 and 27.

This method of operation continued up to and including August 31, 1950. Effective September 1, 1950 supervision of train service position in the Montana Division was placed under Superintendent J. E. Hore, with

to call to protect the express shipment on Train No. 1 between Whitefish and Seattle.

In view of the provisions of that Extra Board Agreement and the practice of fifteen or more years standing of W.A.Y. Seniority District Messengers covering Great Northern trains between Whitefish and Spokane, the assignment of Messenger Jackson of the W.A.Y. Seniority District to Great Northern Train No. 1 on May 7, 1954 was entirely proper and the claim of the Employees in behalf of Messenger Larson of the Montana Seniority District has no validity under the facts, rules and practices 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 Washington-Alaska-Yukon (W.A.Y.) Seniority District covers express messenger service between Seattle and Spokane, and also Great Northern trains 27 and 28 between Spokane, Washington, and Whitefish, Montana. The Montana Seniority District covers such service between Whitefish and Minot. So much is admitted by both parties. The dispute concerns the runs between Spokane and Whitefish.

For the past fifteen years there has been no express service between Spokane and Whitefish except on Great Northern trains 27 and 28, and these runs on these trains have been admittedly under the W.A.Y. Seniority District. For many years prior to fifteen years ago, express was handled on trains 43-44, 263-264, and 3-4, between Spokane and Whitefish, and the service on these trains came under the Montana Seniority District. There is no evidence that express was ever handled on any other trains.

The claim is for an alleged run-around, when a W.A.Y. messenger was called for extra service for a special shipment on Great Northern Train No. 1 from Whitefish to Spokane. The claimant, who is in the Montana Seniority District, contends that the extra work belonged to him.

The Brotherhood's contention is that the Montana Seniority District covers all express messenger service between Whitefish and Spokane except trains 27 and 28. But all that the proof shows is that express messenger service between those points on trains 43-44, 263-264, and 3-4, belongs in the Montana Seniority District. It would be just as legitimate an inference from the proof, that all express messenger service between Spokane and Whitefish belongs to the W.A.Y. District except on trains 43-44, 263-264, and 3-4. Either party can state the matter in terms of "all except", but the evidence simply does not justify its being stated that way by either.

Rule 5 of the Agreement between the parties provides that:

"Seniority districts of defined limits shall be established by mutual agreement . . ., and, pending the establishment of such districts, the districts as now established by Supplement Nineteen (19) to General Order Twenty-Seven (27), shall remain in effect."

The parties have never established the districts, as contemplated by this Rule, so the districts remain as they were. We have no question that unless districts are established settling the matter, the territory between Spokane and Whitefish is covered by both seniority districts, W.A.Y. covering trains 27 and 28, and Montana covering trains 3 and 4, 43 and 44, and 263 and 264, so that if service is ever resumed on those latter trains, either permanently or for one special shipment, the messenger service will belong in the Montana Seniority Division. But when service is started on some other train, covering which there is no past practice, the Carrier will not be in violation of the Agreement in assigning such service to either seniority district.

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 Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of September, 1957.