

Award No. 8080
Docket No. CLX-7796

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 Memphis, Tennessee Agency operations when W. T. Stephenson and C. P. Armstrong were removed from their regularly assigned positions March 25, 1954, and required to perform guard service; and

(b) W. T. Stephenson shall now be paid the rate of pay of his position, March 25, 1954, in addition to the amount already paid him for work performed as a guard separate and apart from the job content of the position to which he was regularly assigned and C. P. Armstrong shall now be paid for one day's pay, March 25, 1954, at the rate of \$301.88 basic per month for work performed as guard separate and apart from the job content of the position to which he was regularly assigned.

EMPLOYEES' STATEMENT OF FACTS: W. T. Stephenson, with a seniority date of October 19, 1935 is the regular occupant of position titled "Clerk", Group 149, Position 295; hours of assignment 7:00 A. M. to 3:30 P. M.; work week assignment Monday through Friday with Saturday and Sunday as days of rest; rate of pay \$301.88 basic per month. The duties of the position as shown on Bulletin No. 67, dated March 11, 1954 are:

"Checking inbound and outbound traffic; working in bad order room, repairing bad order shipments; preparing Form 650 and Form 679, Exception Reports."

Bulletin No. 67 specifies work shall begin and end at "Central Station". The nature of the work attaching to Position 295, Group 149, is proof positive it is confined to Central Station.

C. P. Armstrong, with a seniority date of October 30, 1943, is the regular occupant of position titled "Checker", Group 189, Position No. 40; hours of

from a reading of those Awards that in all instances there was a suspension of work on the positions held by the claimants and the performance of work of other positions.

No such situation is present here. There was no suspension of work on the positions occupied by employees Stephenson and Armstrong, neither was there any work performed by those employees on any position held by another employee. The Awards cited by Employees therefore have no application, nor do they support the allegation of the Employees that the Findings of the Board in those cases bring this case even remotely within the provisions of Rule 57.

The factual situation is clear that Rule 57 has no application in the instant claim, by reason of the fact that there was neither a suspension of work, nor that overtime is involved. The presumption therefore that these employees were suspended from work on their regular positions to absorb overtime disappears in the light of the evidence in the instant case. In this connection, attention of the Board is directed to its many Awards on this point, among them being Awards 5625, 5820, 6318, 6673, 6686, 6692, 6966 and 7044. In the light of the factual situation here and the findings of the Board in the Awards cited, the claim in the instant case is entirely without merit.

While, as above pointed out, there is no basis whatever for the claim for an additional day's pay for these claimants, in addition to the pay of their regular assignments, the amended claim in behalf of employee Armstrong is unique in that here again the presumption is advanced that he was temporarily removed from his regular position and assigned to the higher rated position occupied by employee Stephenson in violation of Rule 80. That presumption is clearly disposed of by the Awards cited. Those Awards speak for themselves and it is unnecessary to labor that point further.

Carrier has shown that neither employee Stephenson or Armstrong was required to, nor suspend work on their regular positions; that no overtime was involved or performed. A denial of the claim is in order under the facts of record, the rules, and Awards of this Division of the National Railroad Adjustment Board 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 case must turn on two points.

1. Were Claimants Stephenson and Armstrong "properly assigned" when Carrier, on March 25, 1954, required them to perform guard service?
2. Was this assignment on Carrier's part done in violation of Rule 57, the "absorbing overtime" rule?

Of importance in finding the correct answer to the first question is to examine the bulletin description of the jobs in question.

Claimant Stephenson was employed as a Clerk, Group 149, Position 295; hours of assignment 7:00 A. M. to 3:30 P. M., the duties of which are described by Bulletin No. 67, dated March 11, 1954 as follows:

"Checking inbound and outbound traffic; working in bad order room, repairing bad order shipments; preparing Form 650 and Form 679, Exception Reports."

Claimant Armstrong was employed as a Checker, Group 189, Position No. 40; hours of assignment 4:00 P. M. to 12:30 A. M.; the duties of which are described by Bulletin No. 40, dated February 11, 1954, as follows:

"Checking inbound and outbound traffic, writing receipts for charges and express handler work as needed."

It is alleged by Organization that Claimant Stephenson was removed from his position at "approximately" one hour and 30 minutes (Claimant Armstrong at approximately 30 minutes) after he had entered upon his eight hour tour of duty for the day (as defined by Rule 45) and before being allowed to complete it and directed to perform armed guard service—separate and apart from the job content of the position to which he was regularly assigned and at a separate location.

The guard service to which each was assigned was to guard a carload government express shipment which first arrived at Union Station at 8:25 A. M., and later in the day was shifted to Central Station from which it departed at 7:30 P. M. that night.

It is claimed by the Organization that the guarding of such shipments attaches to positions excepted from agreement coverage identified as:

"Special Agents, their personal office forces, special officers and patrolmen."

Carrier's defense, mainly, is that Claimants' duties vary from day to day, that Claimants were not required to suspend work on their regular assignments; that Claimants afforded the necessary guard protection to the car in question in the course of their regular assigned duties."

It is argued on behalf of Carrier that "as Claimants did not work outside their regularly assigned hours and received the rate of their regular position, if the work was properly assigned to them—this claim must fail."

It is inescapable from the record that Claimants Stephenson and Armstrong were improperly assigned when, on March 25, 1954, they were required to perform armed guard service, especially when—

1. The service of armed guard duty was not incorporated in the bulletined duties of each position;

2. Armed guard service cannot be said to be "incidental to their positions (Award 6532—Rader);

3. The applicable agreement recognizes Carrier's right to or need for such service, but expressly exempts from the Clerks' Agreement: special agents, their personal office forces, special officers and patrolmen."

With respect to Organization's claim that Carrier's action was violative of Rule 57, we quote the following from brief in argument offered in behalf of Carrier:

"The record shows that on the property and before this Division the Employes' chief reliance has been upon Rule 57 (which is then quoted).

"The Carrier's defense from the beginning has been that Claimants afforded the necessary guard protection to the car in question in the course of their regularly assigned duties. As Claimants did not work outside their regularly assigned hours and received the rate of their regular position, if the work performed was properly assigned to them—this claim must fail."

Having already held that Claimants Stephenson and Armstrong were improperly assigned to the guard duty in question, we now hold such action on Carrier's part to be a violation of Rule 57. Awards 6023 (Parker), 6711 (Donaldson) among others.

With respect to part (b) of the claim, Carrier, when it assigned these two claimants to this guard duty, paid each man the rate of his regular job, viz., Stephenson at the rate of \$301.88 basic per month, and Armstrong at the rate of \$291.88 basic per month. Organization here claims in (b) payment, in addition to that already received, at the rate of \$301.88 basic per month—the higher of the two—on the allegation that Armstrong "should have been paid for the guard service which he performed at the same rate as paid to Stephenson, viz., \$301.88 basic per month.

Nowhere does Organization show what Carrier would have paid special agents, special officers or patrolmen for guard service. In the absence of such a showing we rule that Carrier is now required to pay Claimants for one day at their respective rates and not as sought by Organization in part (b) of claim.

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 with 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 to part (a); part (b) sustained within the limits set forth in Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September, 1957.