

Award No. 9990

Docket No. CLX-8993

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
RAILWAY EXPRESS AGENCY, INCORPORATED

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 Boston, Massachusetts Agency on or about December 1, 1953 in making a run-around on call of Employees whose names and dates when such occurred are shown as follows:

(1) A. J. Campello	December	9 and 15, 1953
(2) G. E. Doherty	"	10, 11 and 24, 1953
(3) P. J. McClearn	"	10, 1953
(4) M. J. Repucci	"	10 and 11, 1953
(5) G. E. Ryan	"	10 and 11, 1953
(6) F. X. Aylward	"	11, 1953
(7) M. J. Christofi	"	12, 1953
(8) T. F. Feeney	"	12, 1953
(9) Wm. Graiver	"	12, 1953
(10) C. G. Skinner	"	12, 1953
(11) C. J. Polito	"	13, 1953
(12) M. V. Guiggio	"	16, 1953
(13) R. A. Morton	"	19, 1953
(14) T. J. Cullinane	"	20, 1953
(15) E. T. Haley	"	21, 1953
(16) W. A. Howard	"	21, 1953
(17) George Spadaro	"	31, 1953

Also in posting an Employee Status Roster in Seniority District No. I listing the names of:

W. G. Halverson	J. D. Feeney	H. J. Carey	A. J. Morley
H. E. Mahoney	J. E. Manning	J. F. Driscoll	Domenic Spinalo
V. V. Ackerman, Jr.	Chris Tombros	W. J. Flynn, Jr.	M. H. Toffalo
J. C. Bariski	K. S. Auslander	E. F. Gorman	A. E. Zardeskas
Lewis Bentley	D. L. Brenna	J. H. McMahon	J. N. Entwistle
J. F. Sullivan	W. F. Callinan	R. F. Martin	J. C. Prescott

(b) Employee A. J. Campello, et al., shall now be compensated for eight (8) hours pay at the rate of time and one-half times the straight time hourly rate of \$65.92 basic per week on the dates as indicated in claim (a) hereof.

Also, the Employee Status Roster shall be declared null and void; and

(c) Carrier shall be required to make a joint check of the payroll records in order to determine the names of the outside individuals, whose services were utilized, in the performance of work in contravention of the seniority rights of bona fide employees whose names are specified in claim (a) hereof.

EMPLOYEES' STATEMENT OF FACTS: A. J. Campello, with a seniority date of October 22, 1940 is the regular occupant of position titled Car Sorter and Loader, Group 73, Position #90; hours of assignment 7:00 A. M. to 4:00 P. M.; work week assignment Thursday through Monday with Tuesday and Wednesday as days of rest; rate of pay \$65.92 basic per week. The duties of the position as shown on Bulletin No. 405, dated December 15, 1952, are:

"Calling and sorting express matter.
Packing Cars."

As revealed by the work week assignment of Employee Campello, Wednesday, December 9 and Tuesday, December 15, 1953, were rest days of the position to which he was regularly assigned. He was therefore available for service, but instead of assigning him to perform service on these dates the service of one or more outside individuals, without any rights under the Agreement, were notified or called to perform service of the character regularly performed by Employee Campello during his regular work week assignment.

George Edward Doherty, with a seniority date of October 30, 1924, is the regular occupant of position titled Relief Clerk, Group 51, Position #S-38; hours of assignment 8:00 A. M. to 4:30 P. M.; work week assignment, Sunday through Thursday, with Friday and Saturday as days of rest; rate of pay \$69.93 basic per week. The duties of the position as shown on Bulletin No. 69, dated August 22, 1949, are:

"Work in Agent's office. Answering telephone, giving out train information, decoding telegrams and keeping records. Taking care of Time Clock and Time Cards."

Days of rest changed from Friday and Saturday to Thursday and Friday during period involving this claim.

As revealed by the work week assignment of Employee Doherty Thursday, December 10, Friday, December 11 and Thursday, December 24, 1953, were rest days for the position to which he was regularly assigned. He was therefore available for service, but instead of notifying or calling him to perform service on these dates, the service of one or more outside individuals, without any rights under the agreement, were notified or called to perform service of the character regularly performed by Employee Doherty during his regular work week assignment.

P. J. McClearn, with a seniority date of May 27, 1943, is the regular occupant of position titled Platform Sorter, Group 71, Position Rel. 38; hours of assignment 4:00 P. M. to 12:30 A. M.; work week assignment Saturday through Wednesday, with Thursday and Friday as days of rest; rate of pay \$64.99 basic per week. The duties of the position as shown on Bulletin 19, dated February 9, 1953, are:

Shop Agreement (Carrier's Exhibit No. 4) and General Chairman Hurley's acknowledgment of the propriety of the Employee Status Roster of Seniority District No. 1 (Carrier's Exhibit No. 2) removes any doubt as to the bona fide status of the 24 employees who met all requirements of the rules, and who remained in service after the weeding out process was completed by reason of disapproval of applications, action taken under the Union Shop Agreement, and for other reasons, of 62 of the 86 employees originally hired in August 1953.

As indicated by Judge Carter in Award 7128, the 24 employees involved in the instant case were properly hired as disclosed by the facts of record; they were not used on overtime or day of rest work of the claimants; the work performed by these employees during the pre-Christmas season in December 1953 was work in excess of that which regular employees had any right under the Agreement to claim on a punitive basis. As further pointed out by Judge Carter in Award 4969, the work performed by these employees was work which the Carrier could get done at straight time rates not only without violating the provisions of the Agreement but in accordance with the rules of the Agreement. Employees have failed to establish any violation of the Agreement in the instant case. Under the facts of record, rules, and precedent Awards cited by Carrier, the claim in the instant case should be denied in its entirety.

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

OPINION OF BOARD: On August 3, 1953, over-the-road truckers (Teamsters) in the Southern New England area went on strike and this resulted in additional business to the Agency at Boston which could not be cared for by the regular forces and available furloughed employees. On August 3, 1953, Superintendent of Organization Kallock, acting for General Manager Webber, contacted the General Chairman to advise him of the Agency's intent to hire new employees to handle the extra work inasmuch as furloughed employees were not responding to telegrams directed to their known addresses. The Organization states the furloughed employees were, for the most part, reluctant to return to service because of the temporary nature of the work. The General Chairman suggested that an agreement be entered into between the Agency and the Employees, whereby employees with seniority be used to perform the extra work before utilizing the services of new employees, but the Agency would not agree to such an understanding. On August 4th the Agency advised the General Chairman that in addition to hiring new employees, regular employees would be permitted to work on their rest days; available furloughed employees would be permitted to work on their sixth and seventh days, and that both regular and furloughed employees would be permitted to work overtime to the extent of four hours on straight time days. Eighty-six (86) persons were newly hired between August 6 and August 12, 1953, and their names, rank on employee status roster for Seniority District No. 1, and the date their pay started was posted on August 14, 1953. Between August 14, 1953, and November 18, 1953, sixty-two (62) names had been eliminated by reason of disapproval of applications, action taken by the Organization against certain employees for failure to comply with the Union Shop Agreement and other reasons, leaving twenty-four (24) employees on the employee status roster. A revised employee status roster was posted on November 18, 1953, and a revised status roster was posted as of January 1, 1954. On October 27, 1953, following a discussion on October 19, 1953, the General Chairman wrote General Manager Webber requesting termination of the employment of these employee status employees, alleging verbal agreement with Superintendent of Organization Kallock that when the strike emergency was over the services of these employee status employees would auto-

matically terminate. The General Manager replied under date of November 3, 1953, denying that such an agreement had been made with the General Chairman.

The Carrier states that the strike ended on August 15, 1953. The Employees say it extended through August 30, 1953.

The Board finds that the employees have failed in their evidence to prove that the status employees were hired by the Carrier under an agreement whereby they would be employed only during the industry's trucking strike of August 9, 1953, and that after the strike was over their employment would be terminated.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1961.