

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jerome A. Levinson, 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 St. Louis, Missouri Agency, August 5, 1954, when C. M. Patrick was called by Carrier to give testimony and take polygraph test concerning a shipment which had been lost in transit; and

(b) He shall now be compensated for eight (8) hours' pay at the rate of time and one-half times the straight time hourly rate of \$328.41 basic per month for August 5, 1954.

EMPLOYEES' STATEMENT OF FACTS: C. M. Patrick, with a seniority date of May 12, 1920, is the regular occupant of position titled, "Air Clerk," Position No. 494, Group 170; hours of assignment and work week;

Saturday	9:00 A.M.- 5:30 P.M.	Lunch	1:30 P.M.-2:00 P.M.
Sunday	3:00 P.M.-11:30 P.M.	Lunch	8:00 P.M.-8:30 P.M.
Monday	3:00 P.M.-11:30 P.M.	Lunch	8:00 P.M.-8:30 P.M.
Tuesday	9:00 A.M.- 5:30 P.M.	Lunch	1:30 P.M.-2:00 P.M.
Wednesday	9:15 A.M.- 5:45 P.M.	Lunch	1:30 P.M.-2:00 P.M.

days of rest, Thursday and Friday; rate of pay \$314.84 basic per month. The duties of the position as shown by Bulletin No. 23, dated November 17, 1952, are:

"Duties of this position require that the applicant be familiar with handling of air express shipments, including receipting, waybill-ing, routing, route stamping, assessing charges, answering tele-phone, etc. On Monday, Tuesday and Wednesday duties of this posi-

criminal laws and the fact that their request to the claimant was transmitted through the Carrier does not mean that the claimant performed any work for the Carrier.

On August 21, 1956, some eighteen months after final denial of this claim by the Carrier's General Manager, the chief operating officer designated to handle such disputes, Employees added some self-serving statements and unwarranted inferences to this dispute. These statements do not change the fact that the claimant performed no work for the Carrier on August 5, 1954, nor do they change the fact that the reading and signing of the statement and the taking of the polygraph test were done at the request of the public law enforcement authorities. However, Employees' letter of August 21, 1956 does make one point clear. Employees stated:

"That Carrier's curiosity was completely satisfied on Tuesday, August 3, is indicated by the fact Mr. Patrick worked his entire tour of duty Wednesday, August 4, the day following, without question or molestation."

This statement is further proof that it was not the Carrier which required claimant to appear on August 5, 1954. As Employees point out, had the Carrier desired to question claimant on August 4, 1954, it could have done so. Employees' statement is further proof that it was the public law enforcement authorities, over whom Carrier had no control, who required claimant to appear on August 5, 1954.

Inasmuch as claimant performed no work for the Carrier on August 5, 1954, there is no rule in the Agreement which requires that Carrier make any payment to him. Therefore, this claim should be denied.

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

OPINION OF BOARD: On his assigned rest day, August 5, 1954, Claimant Patrick was called to report to his accustomed place of employment to read and sign certain statements relative to a stolen shipment of goods. Later that day he was called a second time, to report to the same place to take a polygraph test; he was escorted thence by a detective to the police laboratory for the latter purpose. Claimant asked for compensation of a day's pay at time and one-half for services allegedly performed for the Agency.

Rule 55 of the Agreement between the parties effective September 1, 1949 provided in whole or in part:

"Employees notified or called to perform work on their rest days and specified holidays, shall be allowed a full day's pay at time and one-half rate."

Rule 78 of the Agreement between the parties provided:

"Employees taken away from their regular assigned duties, at the request of the management, to attend court or appear as witnesses for the Express Agency, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the Express Agency."

Petitioner asserted that reading and signing statements, and taking lie detector test, were performed for the Carrier, hence Rules 55 and 78 required payment, and then at time and one-half rate.

The Carrier asserted that Claimant was not notified or called to perform work, nor taken from his regularly assigned duties at its request to attend court or appear as a witness, hence neither Rule 55 nor 78 required payment.

Claimant was questioned by representatives of the police, F.B.I., Carrier and its insurance company on August 3, two days before the incidents here dealt with. But the Petitioner did not introduce what then allegedly took place into the record on the property until almost 18 months later. Also, there is an absence of evidence that the statements were made, and the polygraph test taken, for the Carrier's private interests. These support a conclusion that the Carrier acted as an intermediary between the law enforcement bodies and Claimant and that these methods of investigation were carried on as a proceedings for the enforcement of criminal law rather than for the Carrier. It is true that the public authorities did not contact Claimant directly on his rest day and that they were not present when he signed the statements; however, they indicated that if he did not appear they would pick him up.

We conclude that the Carrier did not violate the Agreement and the claim must be denied.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.