

**Award No. 13193**

**Docket No. CL-12943**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5090) that:

1. Carrier violated the Clerks' Agreement when upon termination of assignment November 14, 1960, Messenger position No. 703, San Antonio, Texas, was abolished and all departments and offices in San Antonio, Texas, were required to pick up and deliver messages, reports, etc., to and from the Telegraph Office.

2. Carrier violated Rules 1, 3 and 5 and related rules of the Clerk's Agreement when it transferred work from a Seniority District No. 15 position to clerical positions in other seniority districts and to parties not under the Clerks' Agreement.

3. Mrs. E. L. Bassham be allowed Messenger position No. 703 rate of pay, \$16.50 per day, each day Monday through Friday beginning November 15, 1960 and each subsequent date thereafter that a like violation occurs.

**EMPLOYEES' STATEMENT OF FACTS:** On November 10, 1960, Bulletin No. 24 was issued abolishing Messenger position No. 703, San Antonio, Texas, effective with termination of assignment November 14, 1960. Employees' Exhibit "A".

On January 10, 1961, claim was filed on behalf of Mrs. E. L. Bassham account messenger duties transferred to employees in other seniority districts and to employees not covered by the Clerks' Agreement. Employees' Exhibit "B".

On January 13, 1961, Mr. J. C. Morrow, Jr., Assistant Superintendent Communications, declined our claim. Employees' Exhibit "C".

On appeal to Mr. D. E. Walker, Employees' Exhibit "D", our claim was declined giving reference to Award 8161 as Carrier's basis for declining claim. Employees' Exhibit "E".

was reduced to five days, such ditto work as was performed on Saturdays and Sundays from 8 A. M. to 5 P. M. has been done by telegraph service employes. The Messenger had never performed all of this work, however. Ditto work arising in the telegraph office outside the scheduled hours of the single Messenger position has always been handled by telegraph service employes. Moreover, prior to the introduction of the ditto process and teletype, telegraph service employes performed all necessary duplication of messages addressed to more than one person by the use of carbon paper.

The Scope Rule of the subject Agreement does not expressly reserve the work in dispute to employes covered thereby. As we have seen, past practice fails to disclose that this work has been performed exclusively by employes classified as Messenger or any other position under the Clerks' contract. It follows that exclusive jurisdiction over said work is not reserved under the Agreement and that a denial award is warranted. In view of this finding no comment is necessary on the third party notice question that has been raised."

There is no basis for the Employees' contention that work is being transferred from Seniority District No. 15 to clerical positions in other seniority districts and to parties not under the Clerks' Agreement merely because various departments and offices bring communications for transmission to the telegraph office and while there pick up any communications previously received and addressed to them.

Service requirements at San Antonio have during the past few years, due to changed conditions as a result of more efficient and economical operations placed in effect, decreased to the point where the messenger position formerly employed was no longer needed or justified. During the 16-hour periods each day when this messenger was not on duty communications received and to be forwarded were handled in the same manner as now with no messenger employed, and in the same manner they were handled at Kingsville two days per week when Award 8161 was rendered.

In the foregoing quotation from Opinion of Board in Award 8161, your Board ruled that:

- 1) The Scope Rule of the Clerks' Agreement does not expressly reserve the work in question to clerical employes.
- 2) Past practice fails to disclose that the work in question has been performed exclusively by employes classified as Messenger or any other clerical position.
- 3) Exclusive jurisdiction over the work is not reserved under the Clerks' Agreement.

Since the controversy with which we are here concerned involves the same question as that involved in Award 8161, i.e., the discontinuance of messenger service, and the resulting method of handling the work being the same in both cases, it is clearly evident that the contention and claim of the Employees in the instant case should on the basis of the findings of the Board in Award 8161 also be denied.

**OPINION OF BOARD:** Effective November 14, 1960, the position of Messenger (No. 703) at San Antonio, Texas, was abolished. The bulletin abolishing

the job contained the following statement: "The remaining duties consisting of NONE will be assigned to position of NONE." Thereafter, the Carrier issued the following instructions:

"Messenger service will be abolished in San Antonio at the end of Vela's tour of duty Monday November 14th. Please notify everyone now receiving messenger service that it will be necessary to pick up their wires at the telegraph office and must tender all business for transmission at the telegraph office. Ditto work, etc., formerly performed by the messenger will not be performed by the telegraphers. Please acknowledge."

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"Passenger Traffic Dept.  
Freight Traffic Dept.  
Car Dept.  
Mechanical Dept.  
And All Concerned, San Antonio.

"Effective 5 P. M. Monday, November 14, 1960, messenger service performed B. R. Vela has been discontinued. Messages for transmission must be brought to the telegraph office and placed in proper box at right side of message boxes in Trainmens cubicle of office. Received messages will be picked up by all concerned from these same marked boxes. Please arrange to make frequent trips to office for your messages."

The claim is based upon the contention that messenger work once performed by the occupant of the abolished position remained to be done after it was abolished and that persons not covered by the Clerks' Agreement, as well as clerical employees of other seniority districts, were performing it.

The evidence supports the contention of the Employees that the messenger work was removed from the Scope Rule of the Agreement and assigned to others, including clerical employees holding no seniority rights in the Seniority District (No. 15) where the abolished position had been established. The Board finds this to be a violation of the Agreement rules cited and relied upon by the Employees.

The Carrier's reliance on denial Award 8161, involving the same parties, is misplaced. There the key findings of fact was that no messenger service remained to be performed on Saturdays, Sundays and holidays after the messenger service had been blanked on those days. Here the Carrier's own evidence shows the work remained to be done and was performed by others, as alleged.

Accordingly, the claim will be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

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That the Agreement was violated.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

**DISSENT TO AWARD 13193, DOCKET CL-12943**

The Award here follows the pattern of error set forth in Award 13190, and the Dissent there is incorporated here by reference. In this Award, the finding is to the effect that messengering of telegrams to and from the Telegraph Office is solely within the province of the Clerical craft, and may not be performed by any other employees. Here again there was no showing by the Petitioner, since there could be none, that messengering was by custom, practice and tradition exclusively performed by Clerical craft employees on this Carrier, and the claim should, therefore, have been denied under principles established by this Board. The Award furthermore gives no recognition to the fact established in the record that while the Messenger position was in existence, the various departments picked up and delivered their own telegrams during the off hours of the Messenger.

The Award does violence to Management's unbargained prerogative to determine how Messenger work may be performed, and we therefore dissent.

/s/ D. S. Dugan

/s/ R. E. Black

/s/ P. C. Carter

/s/ T. F. Strunck

/s/ G. C. White

Dated at Chicago, Illinois, this 18th day of December 1964.