

Award No. 14032

Docket No. CLX-14830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (GLX-147) 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 in the Old Blue Ridge Train Service Seniority District when two Messenger positions in Group 132 assigned to operate between Richmond and Norfolk, Virginia on Atlantic Coast Line Railroad — Norfolk and Western Railway Trains 29-22-21-20 were nominally abolished effective November 1, 1961 and the work or job content thereof transferred to the Petersburg station service seniority roster without prior conference and agreement;

(b) The work shall now be returned to the Old Blue Ridge Train Service Seniority District and Messengers F. W. Clements, O. C. Johnson et al., Train Service Employees in that Seniority District whose rights were adversely affected compensated for salary and earnings loss sustained retroactive to and including December 28, 1961; and

(c) Carrier shall be required to make a joint check of the payroll records in the Old Blue Ridge and Old Kanawha Train Service Seniority Districts to ascertain the names of employees involved together with amount of reparation due each employee affected.

EMPLOYEES' STATEMENT OF FACTS: It was a part of the job content or duties of the two Messenger-Baggage Positions in question for the occupants thereof, viz., F. W. Clements and O. C. Johnson — with seniority dates of March 4, 1959 and June 13, 1946, respectively, in the Old Blue Ridge Train Service Seniority District — to perform work incident to the handling of Express Traffic and United States Mail, assist Station Employees with the loading, unloading and transfer of Express Traffic at intermediate stations en

performed this work along with messengers. In that case messenger service on Illinois Central trains 31 and 32 between Chicago, Ill. and Champaign, Ill. was abolished and a new shortened run was set up on the same trains between Chicago and Rantoul, Ill. The trains, however, continued to run between Chicago and Champaign. Thomasboro, Ill. was an intermediate express office between Rantoul and Champaign. After the new run was established, the station force at Thomasboro loaded and unloaded non-messenger classification traffic with no messenger on the train as it had done when the messenger was present. The Organization contended that the action of the Carrier was in violation of Rules 5, 22 and 79-A. Referee Stocking denied the claim that the messenger run be restored to operate between Chicago and Champaign and that the messengers be compensated for lost earnings. Decision E-964 is directly in point in this dispute and Carrier submits that the precedent established by this award requires denial of the claim.

CONCLUSION

The instant claim is without merit and should be denied. When the Richmond-Norfolk car is worked by station forces at Petersburg, it is a part of the consist of N&W 22 which has a messenger assigned to it from Petersburg to Norfolk. In addition, Petersburg is a messenger terminal and it has always been the practice that station forces can load or unload a car at such point where no messenger is assigned to the train without it being considered a violation of the Agreement. Finally, Decision E-964 of Express Board of Adjustment No. 1, which is controlling in this case, stands for the proposition that messengers do not have the exclusive right to load and unload non-messenger classification traffic, and that it is not, a violation of the Agreement when station forces perform this work at an intermediate point.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Organization alleges that work which was formerly performed by the Claimants is now being performed by employes on another seniority district. They further allege that this work was transferred to the other district without conference and agreement and in violation of Rule 22, which says in part:

“Positions or work involving a position may be transferred from one seniority district to another after conference and agreement between the management and the duly accredited representatives of the employes.”

The record indicates that there is no contention concerning the transfer of positions. The Organization is contending that, “work involving a position,” was transferred from one seniority district to another without conference and agreement. The Carrier defends against this charge by asserting that the employes in the second seniority district are, “unloading non-messenger classification traffic.” This allegation is not denied by the Organization in their initial submission and they failed to submit a rebuttal argument in this case. Therefore, we are forced to accept as true, those unchallenged allegations contained in Carrier’s submission.

We are unable to find any substantive proof in this case that, “Positions or work involving a position,” have been transferred from one seniority district to another. Therefore, we do not believe that the requirements of Rule 22, concerning conference and agreement, are applicable in this case.

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

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 17th day of December 1965.