

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

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

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

DISPUTE (AMENDED).—"Did Mr. A. H. Sykes, serving in the capacity of Safety Agent, holding his seniority for displacement purposes on roster No. twenty-five (25), have a right under the provisions of Schedule Agreement, effective January 19th, 1923, to displace Mr. W. F. Hayden, an Assistant Baggage Agent, covered by our Agreement, employed in seniority district No. five (5)?"

"Shall Mr. W. F. Hayden be restored to his former position of Assistant Baggage Agent? Shall W. F. Hayden be compensated by the carrier for wage losses sustained retroactive to February 1st, 1931?"

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Paul Samuell was called in as Referee to sit with this Division.

Sykes, who was originally employed as mail messenger in February 1899 in seniority district No. twenty-five (25) (known as "Telegraph and Mail Messenger District"), was appointed, effective August 10, 1923, as Safety Agent, which position he held up to February 1, 1931. On this last-mentioned date the position of Safety Agent was abolished, and he was permitted by the management to displace W. F. Hayden, Assistant Baggage Agent, on the Baggage Agent's roster No. five (5). To overcome complaints from the Post Office Department, newspaper publishers, milk shippers, and various departments of the railroad, covering baggage and mail service at Pittsburgh Passenger Station, it is claimed by the carrier that it was necessary to have more supervision and labor to properly handle the work in the Baggage Agent's department, and in response to the request of the Baggage Agent for additional force a new position of Assistant Baggage Agent at a salary of \$175 per month was created on April 12, 1927, with the understanding that the position carried no overtime. Two additional check men were authorized. W. F. Hayden, who held the position of foreman in the baggage room (seniority July 1, 1910), was appointed to the position of Assistant Baggage Agent on April 16, 1927, and he held the position until displaced by Sykes on February 1, 1931. At the time of the creation of the new position in 1927 the position was not bulletined for bidding but was arbitrarily filled by the carrier by the appointment of Mr. Hayden.

Employees contend that when Sykes' position as Safety Agent was abolished he should have exercised displacement on the roster where he formerly held the seniority rights and that in permitting him to displace on roster No. five (5) that same was an injustice to the employees of roster No. five (5), including Hayden.

The management claims that the displacement was brought about through consolidation of rosters Nos. twenty-five and five (25 & 5) and that the consolidation was not negotiated nor was it necessary to negotiate it because rule No. 18 of the agreement between the parties, effective January 19, 1923, gave the carrier the right to consolidate.

It is contended by the management that the Assistant Baggage Agent was an official position and not covered by the clerk's agreement, while the employees contend that the position was never exempted from their agreement, nor was

it exempted through negotiation; that the same positions on other roads were carried under agreements between the management and the Brotherhood of Railway Clerks organization; and, further, that after Hayden's appointment on April 16, 1927, he performed relatively and substantially the same class of work and that in truth and fact the work performed by Hayden from 1927 to 1931 and the work carried on by Sykes from 1931 down to the present date is the work of a baggage foreman, which is covered by the agreement, and therefore the carrier was without right to cause the displacement of Hayden by appointing Sykes.

The scope of the agreement appears to be explained in a general way by rule No. 1, which reads as follows:

"Employees covered by these rules will be divided into two classes:

"CLASS 1. Clerks as defined in Rule 2 and such employees as ticket sellers or clerks, foremen and assistant foremen, crew dispatchers, chief callers, freight and baggage tally men or checkers.

"CLASS 2. Other office, store, and station employees, such as train announcers, gatemen, ushers, baggage and parcel room employees, telephone switchboard operators, elevator operators, operators of office and station equipment devices not requiring clerical ability, watchmen, office boys, janitors, stevedores, coopers, freight handlers, laborers, and others similarly employed in and around stations, warehouses, and storehouses.

"EXCEPTIONS.—(a) Personal office forces as determined by mutual agreement between Committee and Management are shown on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

"NOTE.—Senior qualified employees will be considered for appointment to excepted positions."

The exceptions on pages 1 to 10, inclusive, begin as follows:

"EXEMPTED POSITIONS.—PERSONAL FORCES.—Office of Vice President and General Manager, Entire Office force; Office of Assistant General Manager, Entire Office force, etc."

These exempted positions continue along the same general lines and it is to be noted that nowhere is the office of Baggage Agent or Assistant Baggage Agent mentioned in the exempted positions, while it is to be further noted that Class 1 and Class 2 of rule No. 1 does not mention the position of Baggage Agent or Assistant Baggage Agent. Thus, we have the anomalous situation of the agreement between the carrier and the employees, being entirely silent on the question as to whether the office of Assistant Baggage Agent is included in the scope as defined in Classes 1 and 2, or excepted in the exceptions mentioned in rule No. 1 (a) as shown on pages 1 to 10, inclusive.

The interpretations as well as contentions made by the respective parties herein are irreconcilable; therefore, we are compelled to decide this case upon the question of conduct between the parties beginning April 16, 1927, and for a period of four years thereafter. The record does not disclose whether Mr. Hayden was entitled to the appointment of Assistant Baggage Agent under his seniority rights when he accepted the position on April 16, 1927. It would be interesting to know this fact. However, it must be conceded that Mr. Hayden nor the Brotherhood of Railway Clerks did not demand that the position be bulletined. By their silence they evidently were willing that the position be treated as official or supervisory. No protest was raised as to the action of the management until the management again elected to regard the position as official in 1931, at which time Mr. Hayden was displaced. Therefore, we are impelled to conclude that both parties treated the position of Assistant Baggage Agent as official or supervisory for a period of four years and that the employees' representatives cannot after four years of acquiescence then claim that the position fell within the scope of the agreement. Further, the evidence discloses that Mr. Hayden exercised his seniority rights on a position which he now holds; therefore, no great injustice has been done.

AWARD

The claim of W. F. Hayden is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 13th day of August 1935.