

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY**

DISPUTE.—

"Claim of General Committee of the Order of Railroad Telegraphers on B. & O. R. R. that the position of Baggage Agent, Hamilton, Ohio, be restored at schedule rates of pay of 64¢ per hour and filled by an employee coming within the scope of the Telegraphers' Agreement in accordance with provisions of Article 4 of said agreement. Claim is also made for pay for time lost by C. E. Nungester who was the senior qualified applicant for this position, and for other extra employees whose earnings have been reduced as a result of the Railroad Company's failure to comply with the Telegraphers' Agreement."

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 employee 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.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement bearing date of July 1, 1928, as to rules, and May 16, 1928, as to wage rates, is in effect between the parties.

The parties have jointly certified to the following facts:

"A vacancy in the position of Baggage Agent at Hamilton, Ohio, which is listed in the Telegraphers' Agreement, was advertised on Bulletin No. 94, November 1st, 1934. Mr. C. E. Nungester, who was on the Agent's Extra List and working the position temporarily at the time, was the senior applicant. His seniority dates from October 1st, 1920. Mr. Nungester was not regularly assigned to the position due to the fact that following date of bulletin arrangements were made by the Railroad Company to use a clerk to perform the work assigned to this position. Consequently, on November 22nd, 1934, Bulletin No. 39 was issued to all concerned, advertising a position of Ticket Clerk to be created at Hamilton Passenger Station, basic rate of pay \$4.55 per day, covering hours same as assigned to the Baggage Agent. Effective December 1st, 1934, a Clerk was assigned to the position, who performs the work which was handled by the Baggage Agent on November 1st, 1934, when the position became vacant. The Telegraphers' Committee filed a protest to this arrangement, claiming violation of their agreement."

Prior to June 1930 there had been seven employees at the Station: a ticket agent and a baggage agent, both under the Telegraphers' Agreement, two ticket clerks and two baggage check-men under the Clerks' Agreement, and a janitor. By September 1934, owing to a severe decline in business and successive lay-offs, only the ticket agent, the baggage agent, and the janitor remained. In that month the ticket agent died. Skillman, the baggage agent,

bid in the position having been previously assigned to the position temporarily during mortal illness of the ticket agent. When Skillman was thus temporarily assigned, Nungester, on behalf of whom the claim is made in this case and who was a former baggage agent at Lima, Ohio, and had been displaced there, was temporarily assigned to the position of baggage agent left vacant by Skillman.

On November 1, 1934, as described in the Joint Statement of Facts, the vacancy in the position of baggage agent was advertised and Nungester bid it in but was not regularly assigned because shortly thereafter a position of ticket clerk was created, a clerk was assigned to the position and the position of baggage agent was declared abolished.

The employees contend that this clerk performed exactly the same duties as those of the baggage agent but at a lesser rate in violation of the Scope Rule (1-a), the rule regarding the filling of vacancies (4-b), and the rule forbidding the reduction of rates by re-classification (1-b). The sole question is whether at the time of the clerk's appointment to the position it was, in fact, whatever its name, that of baggage agent or ticket clerk. If it was the latter, there was clearly no violation of the agreement.

The Carrier's contentions are as follows:

1. On July 17, 1931, the baggage and ticket accounts were consolidated. Prior thereto the baggage agent's job was exclusively that of handling baggage, making all reports in connection therewith and keeping the baggage accounts. After the consolidation, however, he merely handled baggage and sold tickets. This contention is not denied in any way by the Employees.

2. After this change in the character of the work and from that point on, the so-called baggage agent in fact performed exactly the same duties as those of the other ticket clerks (of whom there were at the time two)—namely, handling baggage, selling tickets, doing clerical work and reporting to the ticket agent in charge of the station. This statement that, after the change of July 17, 1931, the functions of the so-called baggage agent became those of a ticket clerk is not specifically denied and is met simply by the general statement that the position of baggage agent was never abolished. There is no attempt on the part of the employees to differentiate the position after July 17, 1931, from that of ticket clerk.

3. The Carrier further states that the reason why, after July 17, 1931, and until the end of November 1934 the position of "baggage agent" was not formally abolished was because the incumbent, Skillman, had been in the service of the Railroad for over thirty years and, if the position had been thus abolished, he would have been displaced and, since he was not an operator, he would have been unable by exercising his seniority rights to secure a position covered by the Telegraphers' Agreement. Therefore, in view of his long and faithful service, he was allowed to continue in his position although its character had changed to that of a ticket clerk's position. After the ticket agent died, however, and Skillman succeeded to his position, there was no longer any reason for continuing to carry the position as that of baggage agent when its duties had been previously so changed as to amount to its abolition, in fact, and the substitution for it of the position of ticket clerk. There is no specific answer in the record to the Carrier's allegation of its desire to take care of Skillman in this fashion but the employees alleged generally that the Carrier's re-classification of the position was solely for the purpose of saving money by bringing about a lower rate.

4. The Carrier explains the advertising of a vacancy in the position of baggage agent on Nov. 1, 1934, by stating that this was an error on the part of the local officers and that the error was promptly corrected by the Management. The employees point to the action of the local officers as indicating the true character of the position.

5. In the hearing before the Referee it was argued on behalf of the Carrier that the position of baggage agent is an unusual one and that it would be altogether anomalous to have both a baggage agent and a ticket agent at a station with the small volume of business which Hamilton had after 1930. The fact that, out of the many hundreds of stations listed in the schedule, only two were given baggage agencies (Lima, where the position was later abolished, and Hamilton) lends some support to this argument.

The case comes down to this: There must be some difference between the position of baggage agent and that of ticket clerk. The line of division may be

a narrow one but there must be some such line. The carrier asserts that the difference is this: A baggage agent handles baggage and is in charge of the baggage accounts whereas a ticket clerk sells tickets and also handles baggage but is not in charge of the baggage accounts. There is no denial of this assertion in the record and no attempt by the employes to explain what the difference is between a baggage agent and a ticket clerk. The carrier further asserts that in July 1931 the handling of the baggage accounts was assigned to the ticket agent and that thereafter the so-called baggage agent performed exactly the same duties as the ticket clerks. There is no denial in the record of the change that took place in July 1931 and no discussion by the employes of its significance. Finally the Carrier explains why it did not, immediately after this change, declare the position of baggage agent abolished but waited instead until Skillman, the incumbent, was taken care of by promoting him to the ticket agency. And there is no evidence before us which reflects upon the validity of this explanation.

On the basis of this somewhat scanty record, we are constrained to hold that the petitioners have not made out a case.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 21st day of April 1936.