

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES

BOSTON AND MAINE RAILROAD

DISPUTE.—

"That Mr. M. A. Hooper, Assistant Baggage-master at Holyoke, Mass., be compensated for the difference between what he was paid and what he should have been paid during the period September 10 to September 27, 1934, inclusive, amounting to \$32.32, as follows:

September 10 to 13, inclusive:

Difference between what was paid, viz, 13.9 hours @ 40¢ per hour, \$5.56 and 24 hours @ \$4.24 per day, \$12.72, or----- \$7.16

September 14 to 20, inclusive:

Difference between what was paid, viz, 32.5 hours @ 40¢ per hour, \$13.00 and 48 hours @ \$4.24 per day, \$25.44, or----- 12.44

September 21 to 27, inclusive:

Difference between what was paid, viz, 31.8 hours @ 40¢ per hour, \$12.72 and 48 hours @ \$4.24 per day, \$25.44, or----- 12.72

32.32"

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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 deadlock, Willard E. Hotchkiss was called in as Referee to sit with the Division as a member thereof.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Prior to August 17, 1934, M. A. Hooper held regular position as Assistant Baggage-master at Holyoke, assigned hours 2:15 P. M. to 10:45 P. M., with thirty minutes out for supper. Rate \$4.24 per day.

"Effective August 17, 1934, the assignment of his position was reduced to six hours per day week days on an intermittent basis. Hours 3:00 P. M. to 6:15 P. M. and 8:00 P. M. to 10:45 P. M., in accordance with the following notice issued by General Agent Callahan:

BOSTON AND MAINE RAILROAD

Desk A.

HOLYOKE, MASS., Aug. 16, 1934.

R. D. ROBB, E. J. COUGHLIN, B. A. GUNN, GEO. BESSERER, M. A. HOOPER,
J. FITZGIBBONS, J. ZELINSKY, C. H. E. MORAN.

Effective Aug. 17th following line-up on baggage-room jobs.

Besserer's job 6 A. M.-3 P. M., one hour out for lunch week days.

Hooper's job, 3 P. M.-6:15 P. M., Week Days, 8 P. M.-10:45 P. M., Week Days, 8 P. M.-10:45 P. M., Sundays.

R. D. Robb to open station and handle trains, etc., until 6:00 A. M.
E. J. Coughlin cover trains, etc., 6:15 P. M.-8 P. M., Week days, and on
Sundays up to 8:00 P. M.

Key to station on Thursdays to be sent to Freight Office for M. J. Sullivan
to open station 5:00 A. M., Fridays, account of relief man covering 1st trick
Fridays.

S. T. CALLAHAN, *General Agent*.

C. C. to M. J. S., J. A. A., S. T. C.

"The foregoing change, however, did not affect Mr. Hooper until September
3, 1934, as for the week ending August 23, week ending August 30, and on
Friday and Saturday, August 31 and September 1, he worked in place of
G. W. Besserer, regular assigned baggagemaster at Holyoke at rate of \$4.51
per day. Thereafter from September 3 to September 8, inclusive, Mr.
Hooper worked the six hour intermittent assignment hereinbefore referred
to, or a total of 36.8 hours at rate of \$4.24 per day, for which he received
\$19.50 currently but has since been reimbursed for the difference.

"Effective September 10, 1934, this assignment was discontinued in accord-
ance with the following notice issued by General Agent Callahan, dated
September 10, 1934:

BOSTON AND MAINE RAILROAD

File Desk "A"

HOLYOKE, MASS., *Sept. 10, 1934.*

Mr. ROBB, Mr. COUGHLIN, Mr. BESSERER, Mr. HOOPER:

Effective September 10th, position of Asst. Baggagemaster at Holyoke is
abolished.

Following is hours of Baggagemaster:

Week Days, 6:00 A. M. to 9:00 A. M., 10:15 A. M. to 12:00 Noon, 1:50
P. M. to 5:05 P. M.

Ticket Agent to cover trains #714, 718, 713, and 720.

Labor to be covered by Mr. Hooper, 5:05 P. M. to 6:05 P. M., and from
8:00 P. M. to 10:50 P. M., or until after the departure of train #720.
Asst. Tkt. Agt. to cover train #725 and to perform checking, to make out
"on hand" baggage reports at night. Mr. Besserer to protect storage in
the A. M.

S. T. CALLAHAN, *Gen'l Agt.*

STC-GA.

CC C. H. E. Moran.

Laborer rate of pay 40¢ per hour, less 7½%.

"In accordance with this notice of September 10, Mr. Hooper as of that
date was assigned to the Laborer's position created at rate of 40¢ per hour
on an intermittent basis, hours of service 5:05 P. M. to 6:05 P. M., and
from 8:50 P. M. to 10:50 P. M., or three hours and fifty minutes a day
week days, working a total of 78.2 hours, September 10 to September 27,
inclusive, at 40¢ per hour, for which he was paid \$31.28 for this period.

"Effective September 28, 1934, the Assistant Baggagemaster's position was
restored on a fulltime basis, eight hours per day, six days per week, rate
\$4.24 per day, and Mr. Hooper was reassigned to the job."

There is in evidence an agreement between the parties bearing effective date
of July 15, 1925, and the following rules thereof have been cited:

Rule 1 sets forth scope of agreement and four groups of employees covered.

RULE 48

"Intermittent Service: Where service is intermittent, eight (8) hours'
actual time on duty within a spread of twelve (12) hours shall constitute
a day's work. Employees filling such positions shall be paid overtime for
all time actually on duty or held for duty in excess of eight (8) hours
from the time required to report for duty to the time of release within
twelve (12) consecutive hours and also for all time in excess of twelve (12)
consecutive hours computed continuously from the time first required to
report until final release. Time shall be counted as continuous service in
all cases where the interval of release from duty does not exceed one (1)
hour.

"Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the management and duly accredited representatives of the employees. For such excepted positions the foregoing paragraph shall not apply.

"This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

"Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employees cannot otherwise be utilized.

"Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours."

RULE 49

Weekly Assignment.—Employees, except those who are paid on an hourly basis enumerated in Section 4 of Rule 1, who have regular positions and are a part of the regular force and who do not lay off of their own accord will not be paid less than six (6) days per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.

"NOTE.—Nothing herein shall be construed as changing practice of working certain employees about stations part time and paying them for time worked or preventing the excepting of certain employees that may be mutually agreed upon between the management and the duly accredited representatives of the employees."

RULE 50

Cited but conceded not to be applicable.

RULE 66

"Change in Title or Rate: Established position shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

PETITIONER'S POSITION.—Petitioner contends that the discontinuance of Mr. Hooper's position, as per notice issued by the General Agent under date of September 10, 1934, constituted a violation of Rule 49, because (a) prior to this change, Mr. Hooper held a regular position and was part of the regular force; (b) the discontinuance of his position on September 10 did not constitute a legitimate abolishment of the job since the work on the position continued to exist and was in fact thereafter performed in part by the Assistant Ticket Agent, and partly by Mr. Hooper himself, the latter being classified as a laborer and rated 40¢ per hour; that it has never been the practice, prior to the origin of this dispute, to work baggage room employes at Holyoke part time and pay them only for time worked.

Petitioner also contends that during the period September 10 to September 27, inclusive, Mr. Hooper's work remained relatively the same as it was prior to September 10, and that Rule 66 was therefore violated.

Petitioner further contends that the baggage service at Holyoke was not intermittent during the period in question, September 10 to 27, inclusive, 1934, as contemplated in Rule 48; that Assistant Ticket Agent E. J. Coughlin was assigned to perform baggage work during the enforced lay-off period (6:05 to 8:00 P. M.) of Mr. Hooper.

CARRIER'S POSITION.—The carrier contends that while there was a change in classification and rate of pay during the period in question, it did not constitute a violation of Rule 66, as the work which the laborer did was not the same work as that performed by the Assistant Baggage-master; that the work performed by Hooper was strictly the work of a laborer, the checking of baggage, clerical work, etc., being performed by the Assistant Ticket Agent.

The carrier further cites the "Note" to Rule 49 as giving it the right to work men about stations part time and pay them for time worked; that there is no

guarantee of any particular rate for such laborer, nor is there any rule which guarantees a laborer eight hours per day and forty-eight hours per week.

The fact that the assignment in question lasted only seventeen days, that it followed a previous assignment which had been recognized as incorrect by reimbursement for loss suffered, common knowledge of the conditions under which this type of work is done, and all the attendant circumstances create a strong presumption in the face of conflicting contentions that Mr. Hooper's work remained relatively the same during the period from September 10 to September 27 as it was before and after. If this is true, the discontinuance of the position of Assistant Baggage man was a discontinuance in name and not in fact. The Referee so finds.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of August 1936.