

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(a) When it required Howard W. Arnold to perform services of a Baggage Clerk at Havre, Montana Depot and failed to compensate him at the established rate of Baggage Clerk for the period January 15, 1944 to April 14, 1945.

(b) That the employees involved in this claim be compensated for full eight hours at the current established rate of pay \$7.19 per day, for Baggage Clerk for each day such services were performed at the Havre Depot from January 15, 1944 to April 14, 1945.

EMPLOYEES' STATEMENT OF FACTS: Since September 1942, Howard W. Arnold worked as a Baggage Helper in the Depot at Havre, Montana, with assigned hours of 7:00 A. M. to 4:00 P. M. daily. During the hours of 12:00 noon to 4:00 P. M. no regular Baggage men was assigned to services in the Havre Depot, Mr. Arnold being the only employee assigned in the Baggage Room. Mr. Arnold had complained to the agent in January 1944 about this assignment.

On April 3, 1945, Bulletin No. 7 was issued to the employees covered by the Station and Yard Seniority Roster showing the following position open to bids:

Title of Position.....	Baggageman
Location of "	Havre Passenger
Rate of Pay.....	\$7.19 per day
Assigned Hours	7:30 A. M. to 4:30 P. M.
Expected Duration	Indefinite
Assigned Duties	Check Baggage
Reason:	New Position

Assignment was made on April 14, 1945. During the period January 15, 1944, to April 14, 1945, Mr. Arnold was required to check in and out baggage, cream, cheese, empty cans, etc.—the same duties as assigned to the position listed in Bulletin No. 7, April 3, 1945—and make entries in the books on file in the Baggage Room in the depot at Havre, Montana.

nature or the time consumed in their performance, while the Carrier has submitted itemized statement of the duties of Mr. Arnold's assignment which shows clearly that it would have been a physical impossibility for Mr. Arnold to have performed even one hour of duties other than his own during his daily hours of service.

The Carrier, therefore, believes that the employees have produced nothing to show any justification for their claim in behalf of Mr. Arnold and asks that your Board so hold.

OPINION OF BOARD: The record shows a joint check or investigation made by representatives of the parties. The established facts developed therein are in substance: That the Claimant checked and delivered baggage at intervals as occasion required at any time during his tour of duty. The average time consumed by him in the performance of this work at no time exceeded three hours per day. Whether or not Claimant performed such duties upon the instruction of a supervisory officer could not be composed, but it is admitted that he could not very well have performed such duties from day to day without the knowledge of such supervisor.

The Claimant contends that under the Scope Rule, Agreement effective October 1, 1925, in force during the time covered by his claim, January 15, 1944 and December 1, 1944, Rule 63 thereof applies to him; and for the time covered by his claim, December 1, 1944 to April 15, 1945, the effective Agreement in force dated December 1, 1944, Rule 51 thereof applies to him; and he is entitled to be compensated for full eight hours at the current established rate of pay allocated to the Baggage Clerk's position at Havre, Montana Depot, for the periods of time set forth in his claim, when he performed the duties of Baggage Clerk. The Carrier concedes the Claimant performed the work of Baggage Clerk for an aggregate time of three hours per day during the period covered by his claim, and stands ready to pay him the current established rate of pay for the higher rated position for three hours per day for the time covered in his claim; that under the rules heretofore mentioned, Claimant would be entitled only to the actual time consumed by him in the performance of such duties. Technically speaking, the Claimant was not assigned temporarily to the Baggage Clerk's position; however, within the knowledge and acquiescence of his supervisory officer, he performed the duties of Baggage Clerk for the period of time reflected by his claim. This course of action amounts to an assignment to the position or is at least tantamount to an assignment to the position.

We conclude from the facts and circumstances here presented: That the Claimant performed the duties of Baggage Clerk at intervals during his entire tour of duty and in view of the concession made by the Carrier that the Claimant did perform such duties, not to exceed an aggregate of three hours each day; and further that during Claimant's tour of duty each day he was required to be available to check and deliver baggage, service rendered by a Baggage Clerk, which he did as occasion required that from an analysis of the rules, cited from the effective agreements in force during the time covered by the claim, Claimant is entitled to be compensated at the current established rate of pay for services performed by him in the capacity of Baggage Clerk for a minimum of eight hours each day for the time set forth in his claim. We, therefore, sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Agreement as contended by Petitioner.

AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1946.