

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated and continues to violate the Clerks' Agreement at its Scranton Baggage Station when it improperly abolished a position titled Baggage Agent on August 6, 1946 and assigned the duties attached thereto to lower rated employees and an excepted employee not covered by the Clerks' Agreement, and:

(b) That the Carrier shall now re-establish and restore the improperly abolished Baggage Agent's position to Mr. Joseph Harwin and that he and all other employees adversely affected shall be reimbursed for all monetary losses sustained as a result of this violation of the Clerks' Agreement on August 6, 1946 and subsequent thereto, until the condition is corrected.

EMPLOYES' STATEMENT OF FACTS: At the location involved in this instant dispute, the Carrier maintains a Baggage, Mail and Parcel Room, identified as Scranton, Pennsylvania Baggage Room, and on August 5, 1946, the day prior to the improper abolition of a Baggage Agent's position, fully covered by the scope and operation of the Clerks' Agreement, the following positions existed:

1. Baggage Agent—Hours 8:00 A. M. to 4:00 P. M.
1. Assistant Baggage Agent—Hours 4:00 P. M. to 12:00 Midnight
1. Assistant Baggage Agent—Hours 12:00 Midnight to 8:00 A. M.
1. Parcel Clerk—Hours 7:00 A. M. to 3:00 P. M.
9. Baggage Men—Hours—Staggered, working around the clock

(The above positions are fully covered by the scope and operation of the Clerks' Agreement)

1. Stationmaster—7:00 A. M. to 7:00 P. M.
(fully excepted and not covered by the Clerks' Agreement)

The Carrier had every right to take a similar position in the case of the Baggage Agent. The work decreased on that position to a point where it could be handled by the Parcel Clerk which work had also decreased. The re-arrangement of work is certainly not prohibited under the agreement.

As the Carrier pointed out in its Statement of Facts, the work of the Baggage Agent, Baggage Agent and Parcel Clerk was interchangeable.

That part of the claim "and all other employees adversely affected shall be reimbursed for all monetary losses sustained" is not properly before your Board. That part of the claim was not discussed on the property.

With regard to the list submitted by the Employees to the Carrier purported to be duties performed by the Baggage Agent at the time the position was abolished, the Carrier contends the duties are not authentic. In the first place, the list was submitted four years and eight months after the position of Baggage Agent was abolished. An attempt was made by local supervision to check the list submitted, however, the check was not acceptable to the Superintendent, Scranton Division, because the check could not be considered accurate, it being made for the most part from memory by the Stationmaster, now deceased. As a matter of fact there is no record available which would establish the duties of the former Baggage Agent position. Therefore, the Carrier's Chief Operating Officer could not agree to arrange for a re-check of the list, because, as stated to General Chairman Carlo, it would serve no useful purpose.

The Carrier points out that the Employees made no complaint as set forth here for the period between August 1946 and September 1949. It was not until January 1951 that an alleged violation of the agreement was submitted for adjudication. To date the Employees have produced no evidence to support their position in this case.

The Employees, in handling of this case on the property, have been very careful not to mention or attempt to list the duties of the Parcel Clerk prior to Nov. 1, 1937. The employees first attempted to show that the work of the Baggage Agent was distributed to lower rated employees. This effort failed. The assertion was made that twenty (20) percent of the work went to the Parcel Clerk and eighty (80) percent was divided equally amongst two Assistant Baggage Agents. The second attempt was to list the purported duties of the Baggage Agent and show that some of the work went to the Stationmaster and the remainder of the work to the Parcel Clerk. It simply does not make sense.

The burden of proof is on the Employees to show that the position of Baggage Agent at Scranton, Pa., was improperly abolished and the duties were assigned to lower rated employees and to an employee holding and excepted position. Certainly this was not done when the case was handled on the property.

There is no rule, precedent or practice which would support the Employees in this case. The claim is without merit and should be denied.

All data in support of the Carrier's position have been handled with the Employees on the property.

(Exhibits not reproduced).

OPINION OF BOARD: While the position of Baggage Agent at Scranton was in existence the parties apparently treated it as one excepted from the Scope of the Agreement. The first protest about its abolition was more than three years after it was abolished and it still was treated as an excepted position. It was not until 1951 that the Organization amended its claim to assert that such position was within the Scope of the Agreement.

The Carrier did not raise any question as to the delay in filing the claim in the handling thereof, on the property so we decline to base our decision thereon.

When that position was abolished and the remaining duties reassigned, even according to the Organization's statement, only two duties were thereafter performed by an excepted position, the Stationmaster, to wit, "Answering letters on U. S. Mail" and "Supervision over employes". Certainly the supervision of all employes at the station is a proper function of the Stationmaster and without any description of the correspondence involved other than that stated, we are not able to say that it was improper for an official of the Company to answer letters on U. S. Mail. Thus we are unable to say that the performance of those duties by the Stationmaster constitutes a violation of the Agreement.

The claim also avers a violation of the Agreement when other duties were assigned to lower rated positions within the Scope of the Agreement but there is no showing that the duties so reassigned were not properly within the assigned duties and responsibilities of those lower rated positions. Thus we are unable to say that such reassignment of duties violated the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.