

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

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

DISPUTE.—"Claim of David Flynn employed at Dubuque, Iowa, for the difference in the basic rate of \$3.78 per day and the rate he is now being paid, which basic rate is \$2.75 per day since June 6, 1934."

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

The carrier and the employee 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 the hearing thereon.

The dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

On May 7, 1932, the employee herein was assigned to the position of janitor at the carrier's station in Dubuque, Iowa, at a basic rate of \$2.75 per day, and has continued in that position since that time.

Beginning June 6, 1934, the carrier required Flynn, in addition to his duties as a janitor, to perform certain duties which under Rule 1 of the Agreement between the parties, effective June 23, 1922, would ordinarily be performed by a baggage and parcel room employee.

It was admitted that the parties agreed upon a basic rate of \$3.78 per day to be paid for a position designated as baggage helper. The record indicates, however, that Mr. Flynn has never been assigned to the position of baggage helper; and that the position of baggage helper has not existed at the Dubuque station since May 9, 1932, the date when Flynn was assigned to his present position of janitor.

In support of its position, the petitioner relied primarily upon Rule 50 of the Agreement between the parties:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. Assisting higher rated employees due to temporary increase in volume of work, does not constitute a temporary or permanent assignment."

CONCLUSIONS OF THE DIVISION.—It will be observed that the position of janitor falls within the third classification of Rule 1 of the Agreement, "Laborers employed in and around stations, storehouses, and warehouses"; and that the position of baggage helper falls within the second classification, "Other office and station employees." The Agreement, however, nowhere sets forth a test or definition for determining whether an employee, performing both classes of services, shall be paid as a baggage helper or as a laborer. On behalf of the petitioner, it was urged that employees within Classes 2 and 3 of Rule 1 should be classified "in accordance with the majority of the work regularly performed." The carrier did not deny that this is a fair and reasonable basis for classification. In the application of this test, however, the difference in the relative importance of the two classes of duties, as well as the difference in the amount of time spent on each, should be weighed.

It is the conclusion of the Division that, considering the relative difference in the importance of the duties performed and the amount of time spent on

each class of duties, Mr. Flynn is performing the duties of a baggage helper within the meaning of Rule 1 of the Agreement between the parties.

AWARD

The claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Ill., this 20th day of January 1936.