

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY

DISPUTE.—“Claim of Roland Orr, Fred Tarman, Hobart Mankins, Cleve Smith, Frank Detuneq, Ben Webster, et al., engaged in the handling of mail and baggage at Minneapolis Passenger Station, Minneapolis, Minnesota, for compensation at the rate of time and one-half on the actual minute basis for all time in excess of eight (8) hours exclusive of meal period not to exceed one (1) hour, from the time first required to report for duty on each day to the time of final release, retroactive to April 5th, 1930.”

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 employees 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, Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

On or about April 5, 1930, the carrier regularly employed thirty-nine (39) employees in its baggage room at Minneapolis, Minnesota. In addition to handling its own business at this station, the carrier also handles the depot and station work for the Rock Island and Soo Line railroads.

On or about the date in question, the carrier assigned certain of its employees to the following tours of duty:

Position no.	Name	Title	Assigned hours	Day off	Rate
110	Orr, Roland	Mc. & Bage. Clk.	6:30 a. m. to 10:30 a. m.; 2:30 p. m. to 6:30 p. m.	Monday	\$4.44
125	Tarman, Fred	R. R. Mail Clerk	7:00 a. m. to 12:00 m.; 3:00 p. m. to 6:00 p. m.	Sunday	2.50
6	Mankins, Hobart	Call. Sort.	6:30 a. m. to 10:30 a. m.; 2:30 p. m. to 6:30 p. m.	Sunday	4.36
120	Smith, Cleve	Ml. Bg. Trkr.	6:30 a. m. to 10:30 a. m.; 2:30 p. m. to 6:30 p. m.	Sunday	4.11
15	Detuneq, Frank	Ml. Bg. Trkr.	7:00 a. m. to 11:00 a. m.; 3:00 p. m. to 7:00 p. m.	Sunday	4.11
20	Webster, Ben	Ml. Bg. Trkr.	6:30 a. m. to 11:00 a. m.; 3:00 p. m. to 6:30 p. m.	Thursday	4.11

RESPECTIVE POSITIONS OF THE PARTIES.—The parties to the dispute rely upon certain rules contained in an agreement between them, bearing effective date of November 1, 1929:

“RULE 16. *Intermittent Service.*—(a) 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 re-

lease 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.

"(b) 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.

"(c) This rule shall not be construed as authorizing the work of split tricks where continuous service is required.

"(d) 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 duration and service of the employees cannot otherwise be utilized.

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

"**RULE 20. Overtime.**—No payment will be made for overtime worked except by direction of proper authority or in cases of emergency where such advance authority is not obtainable.

"Except as provided in Rule 16, time in excess of eight (8) hours, exclusive of the meal period, on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

"**RULE 23. Sunday and Holiday Work.**—Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the Railroad and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regular assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight-time rate."

The petitioner contended that the assignments in controversy were split tricks and prohibited by the agreement; the carrier, that the assignments were properly made under the rule permitting intermittent service.

CONCLUSIONS OF THE DIVISION.—Upon the whole record and all the evidence, the Division arrives at these conclusions:

(1) Service of the character usually performed by the claimants herein was being continuously performed during their hours of assignment within the meaning of Rule 16 (d) of the agreement between the parties.

(2) The assignments involved in this controversy were, accordingly, in violation of Rule 16 (c).

(3) The employees, under Rules 16 and 20, are entitled to be compensated in accordance with their claim.

AWARD

The claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Ill., this 18th day of February 1936.

DISSENT FROM AWARD NO. 200, DOCKET NO. CL-229

I dissent from the award in this case for the following reasons:

1. The findings and conclusions are indefinite in that they fail to disclose the circumstances or conditions under which the intermittent assignments complained of were made, and furnish no sufficient basis for the award.

2. The award in its entirety is inconsistent with the facts and evidence before the Division, and does not reveal with sufficient clarity the language of the rule upon which it depends, nor the understanding or interpretation of the

same reached by the referee and by him deemed sufficient to sustain the claim.

The contentions of the parties are disposed of in one brief paragraph in the following language:

"The petitioner contended that the assignments in controversy were split tricks and prohibited by the agreement; the carrier, that the assignments were properly made under the rule permitting intermittent service."

Such a restricted contention by the petitioner is not found in the submission before this Board. The petitioner sets forth his contention with respect to this aspect of the alleged violation of the rule in the following language:

A. "We contend that the intermittent service rule is designed and so worded as to prevent split trick assignments being worked with the exception of isolated instances. We construe the rule to mean that split tricks are not permissible except where an employe assigned to such service is the only employe at that point performing a specific class of work, and there would be no work to perform for periods of one hour or more."

And again in the following language:

B. "The Brotherhood holds that intermittent service is not permissible except *where the employe assigned to such service is the only employe at a particular point performing a specific class of service*, or, if there be more than one employe performing the same service none of the others perform the same service during the period of intermittent release." [Italics added.]

A further contention of the petitioner is that service at the Minneapolis Passenger Station is continuous throughout the twenty-four hours daily, which he states at various places in his submission in the following language:

C. "Service is continuous at Minneapolis Passenger Station, as evidenced by the fact that during the interval of release involved in this dispute, 10:30 a. m. to 3:00 p. m., there is work performed and employes assigned to positions 102, 126, 130, 137, 103, 106, 113, 115, and 123 are working all or a portion of such periods of release."

D. "The information also indicates that baggage mailroom employes, Minneapolis Passenger Station, are and have been recognized and treated as employes necessary to the *continuous operation of the carrier*. * * * [Italics added.]

E. "We admit the employes performed no work during the off-duty period. However, this does not serve to deny payment claimed, because employes are released during period when there is work performed, *continuous operation being required*, and split tricks under such circumstances are in violation of rules agreement." [Italics added.]

F. "In conclusion, manifestly, the words 'where continuous service is required', *can only have reference to the class of work and not to the individual worker*." [Italics added.]

And here the petitioner states his own definition of intermittent service in the following language:

G. "The definition of intermittent service must be construed in connection with the exception which prohibits 'split tricks' where continuous service is required. Intermittent service being permissible only where there is an intermission of more than one hour during which no work is performed by *any employe*." [Italics added.]

Thus, nowhere does the petitioner make the unconditioned averment that "split tricks" are prohibited by the rule as would appear from the statement of his contention in the findings of this award.

Conclusion (1) of the award misleads to the extent that it conveys the impression that work of the class or character performed by the claimants was being performed continuously during the ten or twelve hour spread of the claimants' tours of duty, whereas petitioner's own exhibit shows the contrary to be the fact, with the possible exception of position 110, and as to that position there is no affirmative evidence that the same is not true. It falls squarely under the italicized portion of the quoted paragraph B above. There is no other position of the same classification or rate of pay.

Position No. 125 is that of railroad mail clerk. His tour of duty, within a spread of eleven hours, is so arranged as to cover the morning and afternoon train arrivals and departures. On his morning tour, 24 trains arrive and depart; on his afternoon tour, 13; and during the interval between there is one each arriving and departing. No showing whatever is made that anyone is assigned to or does sort, dispatch, or handle railroad mail during his period of release from 12 m. to 3:00 p. m. There is no other position of this classification or rate of pay.

Position No. 6 is that of caller and sorter. There are ten such positions, one of which is assigned a tour of duty 12 midnight to 8:30 a. m.; two assigned 3:00 p. m. to 11:30 p. m.; five assigned 3:30 p. m. to 12 midnight, and one from 4:30 p. m. to 1:00 a. m. Thus it is shown that none of these assignments cover the period from 8:30 a. m. to 2:30 p. m., in which falls the four-hour interval of release on position No. 6. During this interval there is a complete cessation of work of the class and character performed by the incumbent of position No. 6.

Positions Nos. 120, 15, and 20 are those of baggage and mail trucker. There are seven such full-time positions and three part-time positions. Two of the part-time positions are assigned from 6:30 a. m. to 10:30 a. m., and one from 6:45 p. m. to 10:45 p. m. Three positions are assigned from 3:00 p. m. to 11:30 p. m.; one from 3:00 p. m. to 12 midnight, and one from 3:30 p. m. to 12 midnight. The intermittent assignments in this classification are shown in the award, and it will be seen that no employee in this classification is working during the interval of release on those positions, except that in the morning positions 15 and 20 continue thirty minutes after position 120 is released, and in the afternoon those two positions do not resume until thirty minutes after position 120 has resumed. Again, in this classification, for a period of three hours and thirty minutes, from 11:00 a. m. to 2:30 p. m., there is a complete cessation of work.

That is the evidence before this Division. There being no employees engaged in the class or character of work to which intermittent assignments are made during the intervals of relief of employees on split tricks, there could be no service of that character performed unless it were by employees engaged in other character of work, and no word of evidence to that effect was offered before this Division. Conclusion (1) is, therefore, in error.

Taking the award as a whole, one gains the impression: first, that the Referee does not recognize that the two terms "intermittent service", as related to assignments, and "split trick" mean the same thing; second, that he does not take cognizance of the evidence showing that the class of work upon which the claimants were engaged was not being performed during their intervals of release, but bases his conclusions and award upon a concept or interpretation of the words "continuous service" as used in the rule, which he fails to reveal or explain, and which is indispensable to its support in view of the plain language of paragraph (d) of the rule, reading:

"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 duration and service of the employees cannot otherwise be utilized." [Italics added.]

The award in this case is inconsistent with the award of this Division No. 100 in Docket No. 156. In that case the carrier assigned certain baggage masters or baggagemen to split tricks, and during the intervals of their release required the ticket agents and janitors to perform their work. This Division said in part:

"Baggage service was assigned to be performed by other employees (ticket agents and janitors) during intervals of release of those assigned under rule 48, intermittent service and, therefore, the baggage service at Greenfield, Mass., was not intermittent within the meaning of rule 48."

This Division also passed on this question in its award Nos. 202 in Docket 223, and 203 in Docket 224.

The U. S. R. L. B., in its Decision 3864, Docket No. 4501, passed upon this question in a case presented to it in language very similar to that used in the instant case. The employees there contended that the intermittent service rule was not properly applied in assigning night ticket clerk and night baggagemen to intermittent service, because the station in question, one of the larger ones on

the lines of the carrier involved, employed upwards of forty employees coming under the clerks agreement, and *there was work to be performed during the interval of release* of the employees assigned to intermittent service. The Labor Board denied the claim.

I hold that continuous service, as referred to in this rule, means continuous work of the class or character of that performed, or to be performed, by the employees assigned to intermittent service, and that the language and history of the rule does not support any other interpretation. Therefore, the assignments complained of in the instant case were proper.

(S.) GEO. H. DUGAN.

The undersigned concur in the above dissent:

A. H. JONES.
L. O. MURDOCK.
C. C. COOK.
R. H. ALLISON.

CHICAGO, ILLINOIS, February 24, 1936.

SUPPORTING OPINION

We support Award No. 200, in Docket No. CL-229, by quoting the following from the "Position of Carrier":

"The Management submit to the members of the Board that the employees named in this dispute were and have been properly paid for work performed within the provisions of current clerks' schedule rule 10, 'Intermittent Service', specifically paragraph (d) of the mentioned rule reads:

"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 (1) hour duration and service of the employees cannot otherwise be utilized." [Italics ours.]

"The employees involved in this dispute were and would be employed handling United States mail and baggage at a large terminal where continuous operation of the carrier means the uninterrupted movement of trains, including the work necessary to the dispatch and handling of United States mail and baggage, yet the fact remains, as evidenced herein, the arrival and departure of passenger trains arranged for the convenience of the traveling public, proves that within each 24-hour period there would be *no work which the claimants could perform* of more than one hour duration and their services could not otherwise be utilized." [Italics ours.]

The record shows that the work of handling mail and baggage at Minneapolis was performed during the periods of release of the employees in question. The evidence also indicates that the Carrier worked these employees intermittently on positions or work requiring continuous service or performance.

The submission of the Carrier further proves that "peak-load" periods were established where continuous service was required. The Carrier's evidence shows that between the hours of 6:35 and 9:45 a. m., 23 trains arrived and/or departed, and that from 3:35 to 11:25 p. m., 31 trains arrived and/or departed. During the periods of release of the employees in question, viz, from 10:00 a. m. to 3:00 p. m., 6 trains arrived and/or departed, and service was continuous.

The assignments were unquestionably in violation of the Intermittent Service Rule, as further indicated by Question and Answer No. 5 of Interpretation No. 3 to Decision No. 630. That Interpretation, in its entirety, is cited as additional proof of the correctness of the award.

(S.) J. H. SYLVESTER.

CHICAGO, ILLINOIS, February 25, 1936.