

Award No. 9030
Docket No. TE-8283

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Effective March 1, 1954, Assistant Baggage Agent, Williamsport, Pa., 8 A. M. to 5 P. M. daily with rest days Saturday and Sunday, was reduced to a 5 day position not filled on Saturday or Sunday and the Assistant Baggage Agent with hours 7 P. M. to 3:30 A. M. daily was changed from Tuesday and Wednesday to Saturday and Sunday and the position not relieved on Saturday and Sunday.

The work of the position continues as it was before the change was made, and has been transferred to employees not covered by the Telegrapher's Agreement. Claim is made that this improper assignment is a violation of the Agreement and that rest day relief be furnished the position filled by employees under the coverage of the Telegrapher's Agreement.

A. W. Gallew, who was formerly assigned to make relief be restored and made whole for any loss in earnings or expense incurred and any other employees affected by this change be reimbursed for loss and expense incurred.

EMPLOYEES' STATEMENT OF FACT: This subject was listed for discussion with the Superintendent on April 5, 1954 by the Local Chairman as follows:

"The abolishment of the Relief Baggage Agent's position, Baggage Room, Williamsport, Pa." (Exhibit A-1.)

On June 1, 1954, Local Chairman revised the subject matter of the claim and sent his position and revised subject matter to the Superintendent for preparation of Joint Submission. (Exhibit A-2.)

On June 15, 1954, the Superintendent sent Local Chairman "Agreed Upon Facts" and his position but did not change the subject matter as requested by Local Chairman in his letter of June 1, 1954. (Exhibit A-3.)

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that when Assistant Baggage Agent, A. W. Gallew (properly N. E. Gallew), at Williamsport, Pa., was laid off by the Carrier on Saturdays and Sundays, effective March 1, 1954, there was a substantial amount of work to be done which should have been assigned to Mr. Gallew under the controlling Agreement.

In defense of the claim, the Carrier says "On Saturday and Sunday Station Baggage men do not perform duties exclusively reserved to Assistant Baggage Agents," and "There is no violation of the Agreement by reason of the Assistant Agent performing duties of Assistant Baggage Agent during his tour of duty on Saturday and Sunday."

Prior to March 4, 1954 this was the schedule for Assistant Baggage Agents:

L. A. Overturf, 8:00 A. M. to 5:00 P. M. (1 hr. for lunch)
Rest days, Saturday and Sunday.

G. N. Secules, 8:00 A. M. to 5:00 P. M. (1 hr. for lunch)
Vice Overturf. 8:00 A. M. to 5:00 P. M., Monday, Extra Agent.
7:00 P. M. to 3:30 A. M., Vice A. W. Gallew.

A. W. Gallew, 7:00 P. M. to 3:30 A. M. (30 minutes lunch),
Rest days, Saturday and Sunday.

On and After March 1, 1954, this was the schedule:

L. A. Overturf, 8:00 A. M. to 5:00 P. M. (1 hr. for lunch),
Rest Days, Saturday and Sunday.

G. N. Secules, 7:00 P. M. to 3:30 A. M. (30 minutes for
lunch), Rest Days, Saturday and Sunday.

Thus, by the later schedule no Assistant Baggage Agent was assigned for duty on Saturdays and Sundays, resulting in the abolishment of the position which Mr. Gallew had theretofore filled.

The designated duties of Assistant Baggage Agent Overturf were:

"Supervision of Baggage Room during his tour of duty. Preparation of Daily and Monthly Baggage Reports. Preparation of Mail Reports. Card mail cars. See that cars are spotted and carded. Look after Parcel Lockers as well as coin vending machines. Preparation of milk waybills. Check baggage (but does not load or receive baggage from trains). Write up valuable mail to and from trains. Checks with Movement Office as to consist of trains in and out. Preparation of time sheets."

The designated duties of Assistant Baggage Agent Secules were:

"Supervision of Baggage Room during his tour of duty. Work with Movement Office as to consist of trains in and out. Check valuable mail in and out. Work with Yard Master."

The designated duties of Assistant Baggage Agent Gallew were:

"Those of the positions which he relieved."

There were also on duty at the station on Saturday and Sunday, one Baggage man, 12:00 noon to 8:00 P. M., one from 10:00 P. M. to 6:00 A. M., two from 11:59 P. M. to 7:59 A. M., and one from 8:00 A. M. to 4:00 P. M. on Saturday.

The Assistant Agent at the Williamsport, Pa. station was on duty on Saturday and Sunday, 8:30 A. M. to 5:30 P. M. He had assistance in the Ticket Office.

It will be noted that the duties of Overturf, regularly assigned for day time duty, and Secules, regularly assigned for night time duty, differ materially; those of Mr. Overturf were much more numerous and detailed than those of Mr. Secules. Thus, when Mr. Gallew was in relief of Mr. Overturf his duties differed and were more extended than when he was relieving Mr. Secules.

It is demonstrated that from 1948 to March 1, 1954, there had been a marked diminution in the number of trains passing through the station at Williamsport and therefore a like reduction in passenger travel and in the work to be done by the employees of the Carrier, including the Assistant Baggage Agents.

The Assistant Agent and the Assistant Baggage Agents were in the same class of employment and on the same Seniority Roster.

It is the claim of the Carrier that after the change on March 1, 1954, the duties theretofore performed by the Assistant Baggage Agents on Saturday and Sunday had been either delegated to the Assistant Agent, postponed or discontinued for those days. It sets up in detail just how the work has been allocated without assignment of any of the exclusive duties of the Assistant Baggage Agents to other craft.

We are cited to numerous awards pro and con as to the right to assign the duties of the Assistant Baggage Agents to the Assistant Agent.

Employees insist that it is not feasible that the Assistant Agent supervise the Baggage Room and the Ticket Office. It appears that both offices are in the same building and are the only offices in the building. The physical dimensions are not before us and it does not appear that the rooms are not in such proximity as to prevent the Assistant Agent making periodical visits to the Baggage Room. We may not say that the Assistant Agent could not supervise the Baggage Room inasmuch as he had assistance in the Ticket Office and the supervision did not require his continuous presence in the Baggage Room.

There is not complete unity in the awards of this and other Divisions of the Board on the question before us but there are differentiations from ours in controlling facts in practically all of them.

Award 6098, this Division, is relied on heavily by the Organization. In this award there is a vigorous dissent by the Carrier members. The majority rests its opinion, in part, upon the finding that there was no change of conditions and a reduction of work on and after September 1, 1949.

Here, change of conditions and reduction of work appears and is the basis of the change which is challenged by the Organization. Award 6688, this Division, is also cited by the Organization. There the majority found, as a premise for its award, that the work involved had been assigned to an employe of a different class than claimant. Whether such a finding was warranted by the facts it is not our province to say.

In a well-reasoned opinion, Award 6946, this Division, Referee Carter sitting, said: "It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one." This is the basis of the claim of the Organization here, viz; that work has been assigned to Baggage men and Assistant Agent which is the exclusive right of the Assistant Baggage Agents to perform. But it is not clear that the checking of baggage has been the exclusive right of the Assistant Baggage Agents to perform. It reasonably appears that Baggage men have done such work theretofore, by common consent. Nor does it appear that the Assistant Agent may not have done that work on Saturdays and Sundays.

Continuing in the opinion in Award 6946: "But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other." This is the position of the Carrier as to the work delegated to the Assistant Agent on Saturdays and Sundays. We believe it to be sound.

But the Organization points out that the Assistant Agent was not on duty from 5:30 P. M. to 8:30 A. M. on Saturdays and Sundays nor was any Assistant Baggage Agent on duty during these periods, and it is thus urged that some of the work which it was the exclusive right of the Assistant Baggage Agents to perform must have been done by Baggage men.

It will be helpful to again look at the duties assigned to Assistant Baggage Agent Secules, who before the change of March 1, 1954 served from 7:00 P. M. to 3:30 A. M., except on Saturdays and Sundays and was relieved on those days by Mr. Gallew. These duties were:

"Supervision of Baggage Room during his tour of duty.
Work with Movement Office as to consist of trains in and out.
Check valuable mail in and out. Work with Yard Master."

The Carrier asserts, and it not denied, that "Consists of trains with Train Dispatchers omitted on Saturday and Sunday." Nothing appears as to the checking of valuable mail in and out, nor as to the nature or extent of the work with the Yard Master and these items are without proof. There is then left the one duty on Saturday and Sunday, from 7:30 P. M. to 3:30 A. M. of Mr. Gallew, when he was on the job, "Supervision of Baggage Room during his tour of duty."

This last assigned duty was the subject of a stipulation between the parties in a "Joint Statement of Agreed Upon Facts" of date June 28, 1954, Exhibit A, as follows:

"With the abolishment of A. W. Gallew's position on March 1, 1954 the seven-day Assistant Baggage Agent positions were reduced to five-day assignments and, as such, the Assistant Baggage Agent positions are blanked on Saturday and Sunday. Any su-

pervision required on Saturdays and Sundays is performed by the Assistant Agent at this point." (Emphasis ours.)

It is developed that the supervision above referred to was done by the Assistant Agent leaving directions, in writing, to the Baggage men of duties to be performed by them in his absence. That this memo was a direction is obvious. Whether it could be classified as "Supervision of Baggage Room during his tour of duty", query? In view of the stipulation that any necessary supervision required was performed by the Assistant Agent, we are not required to say if such procedure met the designation of duties, assigned to the Assistant Baggage Agent at night at the Williamsport station. (All emphasis ours.)

It will be noted that the duty of checking baggage is not assigned for the night shift of the Assistant Baggage Agent.

Upon the whole record it appears that the Carrier in the procedure adopted in staggering the positions at the Williamsport, Pa. station properly exercised a managerial function and proof is not made that the controlling agreement was violated in the manner claimed.

In view of the disposition made of the claim of the Organization on behalf of Mr. Galloway there is no necessity to give consideration to other employees affected who are included in 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.