

**Award Number 3108**

**Docket Number CL-3060**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Curtis G. Shake, Referee

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**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 General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When it failed and refused to properly compensate Arthur E. Wittbecker, Clerk, in the Auditor of Passenger Receipts Office at St. Paul, Minnesota, for work performed on position known as P-6, since January, 1942.

2. That Clerk A. E. Wittbecker shall be compensated at the rate of \$8.52 per day instead of \$7.02 per day, which he was paid, or a difference of \$1.52 per day for all time required to perform the higher rated work, assigned to P-6 retroactive to January, 1942.

**EMPLOYEES STATEMENT OF FACTS:** In the Office of Auditor of Passenger receipts there are four clerical employees assigned to Passenger Rate Divisions, one of whom, position P-6, prior to the war, handled both commercial and government divisions, while the other three employees handled only commercial divisions.

The position handling both commercial and government divisions paid a rate of pay that was higher than the other three positions handling only commercial divisions.

Due to the war emergency and the unprecedented increase in the movement of the Armed Forces since January 1942, the work on government divisions increased from two or three days each month to the point where this one employe though devoting his entire time to government divisions, was still unable to keep up the work and the Management on such days assigned Clerk Wittbecker to handle the overflow of these government divisions but failed and has since refused to compensate Mr. Wittbecker at the rate applicable when both Commercial and Government divisions are handled.

**POSITION OF EMPLOYEES:** This dispute and claim arises from the application of the Agreement between the Carrier and the Organization regarding the proper assignment of clerical work and the preservation of established and agreed to rates of pay, which directly involves the application of the Agreement between the Carrier and the employees dated October 1, 1925, and the following Rules:

since he worked under the direction and guidance of Mr. Braun, who continued to assume the responsibility for the proper performance of the work;

Fourth, the increase in the volume of work necessitating assistance in its performance was a temporary one resulting from the war time movement of military personnel.

Fifth, the employees, despite the precedent well established by your Board disapproving of such a procedure, have filed in this case a retroactive claim covering a period of some two years in advance of their first notification of non-acquiescence in a method of payment which has been acceptable without protest over a long period of years.

It is, accordingly, the position of the Carrier that Mr. Wittbecker was properly compensated for the performance of the work in question, and we ask that your Honorable Board so hold, thereby maintaining precedent established in your Award No. 1531 covering a very similar case.

**OPINION OF BOARD:** On February 5, 1944, the Claimant made demand upon the Carrier for the difference in his daily rate of \$7.02 and that of \$8.52, applicable to Position P-6 (\$1.50, not \$1.52 as alleged in the claim), for the period he had performed the higher rated work, retroactive to January, 1942. The occupant of Position P-6 regularly handles passenger rate divisions in the Office of Auditor of Passenger Receipts at St. Paul. The employee assigned to that position was unable to keep up with the work on account of the increase in the volume of business incident to World War II. The question here is whether the Claimant was temporarily engaged in fulfilling the duties of Position P-6, or whether he was merely assisting the regular holder of said Position, within the meaning of Rule 63 of the Agreement effective October 1, 1925. The 1925 Agreement was superseded by the current Agreement on December 1, 1944, but Rule 63 of the former is substantially like Rule 51 of the latter, insofar as their application to this controversy is concerned. We cannot, however, treat the claim as bounded by February 5, 1944 (when demand for redress was first made upon the Carrier) and June 2, 1944 (the last date on which the Claimant is shown to have worked on Position P-6). The Claimant's demand was for compensation for work performed "at various times during the past year;" and, if a violation of the Agreement has been established, redress should not be terminated until the wrongful practice is discontinued. This being purely a wage controversy, it was as much the obligation of the Carrier to apply the proper rate as it was the right of the Claimant or the Petitioner to make protest. The doctrines of laches or estoppel have no proper application here. We may add that it is not contended that either the Agreement of 1925 or that of 1944 contains any pertinent cut-off rule that would restrict the claim.

On the merits, this case presents a factual situation comparable to those revealed by the records resulting in Awards Nos. 3106 and 3107. No good purpose would be served by again repeating what was there said. We hold, therefore, that the evidence before us, when considered in the light of the inferences to be drawn therefrom, preponderates in favor of the Claimant.

**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 applicable Agreement.

**AWARD**

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1946.