

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(a) That the carrier violated and continues to violate the Clerks' Agreement, when on March 1, 1947, it created the position of Assistant Stock Record Clerk, Store Department, Proctor, Minnesota, rate of pay \$206.50 per month.

(b) That the correct and agreed upon rate of pay for the position of Assistant Stock Record Clerk on March 1, 1947, was \$221.50 per month.

(c) That J. E. Louis Pelletier shall now be made whole for wage loss suffered by reason of the violation until such time as the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On March 1, 1947, the carrier created a position of Assistant Stock Record Clerk, rate of pay \$206.50 per month.

There existed, prior to March 1, 1947, in the same seniority district a position of Assistant Stock Record Clerk, rate of pay \$221.50 per month. This position is still in existence.

The necessity for further assistance to the Stock Record Clerk was caused by the abolishment of two positions in the Store Department, namely, Oil Clerk and Coal Clerk, each with a rate of pay of \$216.50 per month. The work of these two positions was parceled out to the Stock Record Clerk and his two assistants. The duties of the abolished position of Coal Clerk were turned over to the senior Assistant Stock Record Clerk, rate of pay \$221.50 per month. The duties of the new position of Assistant Stock Record Clerk, rate of pay \$206.50 per month consisted of the following:

"Post unit requisitions for material disbursed from Missabe and Iron Range Division to stock record cards, and balance same.

Post unit purchase and receiving cards of material purchased to stock record cards and balance same."

These are duties which the Stock Record Clerk and the senior Assistant Stock Record Clerk would be performing, if the new position had not been created. The two Assistant Stock Record Clerks work on the same stock record books, the only difference in their duties being that the senior assistant performs the work of the abolished Coal Clerk position, which requires not more than two hours per day.

OPINION OF BOARD: In the Stores Department of the Carrier at Proctor, Minnesota, a position of Assistant Stock Record Clerk was established March 1, 1947, with a rate of \$206.50 per month.

Prior to that time there was in that Stores Department a position of Stock Record Clerk and also a position of Assistant Stock Record Clerk, the latter with rate of \$221.50 per month.

The Organization contends that Rule 38 (a) required the Carrier to fix the rate of the position of Assistant Stock Record Clerk established March 1, 1947, at \$221.50, the same rate as the then existing position of Assistant Stock Record Clerk.

Rule 38 (a) provides that:

"The salaries for new positions will be in conformity with the salaries of analogous positions (of similar kind and class) in comparable localities."

Admittedly the two positions here were in the same locality.

The only question remaining is whether the positions were "analogous", that is, of similar kind and class.

While it would not be conclusive, the designation by the Carrier of the same name for the two positions would indicate that the Carrier considered the two positions similar.

The Organization points out that the duties of this position would be performed by the Stock Record Clerk and the existing Assistant had the position in controversy not been established.

Carriers bulletin of March 29, 1947, described the duties of this position as:

"To assist stock record clerk. To assist in figuring prices of material. Posting of prices on Valued Stock Control, and such other duties as may be assigned in this office."

The Organization insists that the only difference in the duties of the two positions is that occupant of the position existing prior to March 1, 1947, "performs the work of the abolished Coal Clerk position, which requires not more than two hours per day."

The Carrier admits that "generally speaking, the incumbents of the two positions perform relatively the same kind of duties, but says the senior Assistant Stock Record Clerk is expected to and does assume greater responsibilities and also to a large extent directs the work of the junior Assistant Stock Record Clerk." It seems hardly likely that a Stock Record Clerk with two Assistants, all working in the same office, with the same books and records would not do all necessary "directing" without leaving it to one of the assistants to direct the work of the other.

Nor does the Carrier point out what "greater responsibilities" the senior Assistant assumes.

The Carrier contends, apparently with the thought of justifying its action here, that it has on its property many clerical positions with the same title and performing the same type of work but paid different rates. This, of course, is perfectly proper where the Carrier and the Organization have agreed on the various rates for the different positions. Rule 36 (a) of the Current Agreement expressly provides that pay for positions existing at the time this Agreement became effective should become a part of the agreement and "remain in effect until changed by mutual agreement between the parties." All such inequalities were therefore frozen by this Article of the Agreement.

On the other hand, the purpose of Rule 38 (a) was to prevent the creation of additional inequalities in pay by providing that as to new positions

created the pay should be the same as the pay of analogous positions in comparable localities.

From the facts presented by the records in this case, we are of the opinion that the two positions here in question do come within the provisions of Rule 38 (a) and that the rate of pay for the two positions should be the same.

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 Agreement as claimed.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of November, 1948.