

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

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 System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated rules of our current Agreement effective September 1, 1950, when, on March 1, 1951 it established a position of Office Boy rate \$10.30 per day to perform the normal regular duties theretofore assigned to a position designated as clerk at Agreement rate of \$12.01 per day in office of Manager, Mail and Baggage Traffic, St. Paul, Minnesota.

2. That the rate and position be restored to its Agreement status and that Emil F. Anderson, who was assigned to it March 1, 1951 as well as his successor, if there be any, be paid wage loss sustained representing the difference between the \$10.30 and the \$12.01 per day rate retroactive to March 1, 1951 and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1, 1951 the clerical force in the office of Manager Mail and Baggage Traffic, St. Paul, Minnesota comprised the following:

Name of Occupant	Position	Rate of pay per day
(1)		\$14.51
(2)		13.21
(3) Joseph Wasiluk	Clerk	12.01

The normal duties assigned to each of the above listed positions were:

Position No. 1;

Works mail space for trains No. 7, 8, 9, 10, 27, 28, 29 & 30 in district C-G.

Checks emergency requisitions against mail record.

Writes up emergency statements for eighth, tenth and thirteenth divisions.

Checks mail totals with postal service.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 1, 1951, Carrier established a position of Office Boy, rate \$10.30 per day, in the office of the Manager of Mail and Baggage Traffic, at St. Paul, Minnesota. It is the claim of the Organization that this position should have been rated at \$12.01 per day and claim is made for the difference in the two amounts.

Immediately prior to March 1, 1951, there were three clerical positions in this office that paid different daily rates which were \$14.51, \$13.21 and \$12.01. The lowest rated position was increased from \$12.01 to \$13.21 on January 1, 1952, because of added duties in settlement of a claim made therefore.

It is clear from the record that the clerical duties in this office increased to such an extent that on March 1, 1951, an additional employee was assigned to the office and designated as Office Boy. It is the contention of the Carrier that a position of Office Boy was abolished in this office in the early 1930's and that the duties thereof had been thereafter performed by the three clerical positions as incidental to their clerical work. The parties agree that most of this work was performed by one Wasiluk, the lowest rated clerk. The record indicates to us that the other two clerks performed some of this lower rated work from time to time although it does not appear to have been assigned to them as a part of their duties. It is also apparent from the record that most of the work assigned to the Office Boy was taken from Wasiluk's position. Wasiluk was assigned the overflow work of the other two clerical positions and, after claim was made therefor, Carrier adjusted his rate of pay by increasing it to the rate received by the second rated clerk.

The Carrier argues that it gave the Office Boy the lower rated work in this office and placed Wasiluk in higher rated work (working on mail and mail space work) for which he was later given the \$13.21 per day rate. We agree that the Carrier may rearrange its work in this office in the manner that it did. The up-rating of Wasiluk's position appears to have settled all differences as to the three designated clerical positions. The question for solution is whether the Office Boy is in fact such and, if not, the rate of pay he is entitled to receive.

We do not deem the title of "Office Boy" as important in the present dispute. The record does not show the duties of an office boy as they were when that position was last in existence. There is no Office Boy position in the seniority district here involved from which the rate of such a position could be determined under Rule 49, current Agreement.

The record in this case is replete with conflicting statements on various phases of this dispute. To discuss each of them would unduly extend this opinion. We shall confine our discussion of the evidence contained in the submissions to the conclusions we have reached therefrom. We find as follows: The two higher rated positions contained among their duties the working on mail and mail space work which the third rated position (Wasiluk's) did not. When the latter position was required to do this mail work, the rate of pay was increased. It seems logical, therefore, to say that the work performed by Wasiluk which did not include working on mail and mail space work, was work for which the \$12.01 rate per day had been applied for many years. The duties of the Office Boy as shown by the record consisted of work performed by these three clerks, principally Wasiluk, on March 1, 1951. The Office Boy is doing the same work that Wasiluk performed before he was assigned and paid for higher rated work. Under the record here presented, Claimant is doing the same work as Wasiluk did before the need for the extra employee arose. As he does the same work, he should have been

compensated at the same rate of pay under the provisions of Rules 48 and 49, current Agreement. An affirmative award is in order. Awards 3396, 4080, 4810, 5789.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1955.

DISSENT TO AWARD 7058, DOCKET CL-6702

The majority herein correctly agree "that the Carrier may rearrange its work in this office in the manner that it did" and correctly held "The question for solution is whether the office boy is in fact such and, if not, the rate of pay he is entitled to receive."

The record contains a complete listing of the duties performed by the office boy. The Carrier contended that those duties are, in fact, office boy's duties, and to a very great extent the same as those performed by the incumbent of the previous position of office boy. Accordingly, the solution of the question recognized by the majority to be at issue herein warranted a denial award because the Organization did not contend that the duties, supra, were not bona fide duties of an office boy's position but its entire argument was based on the fact that they are duties which were formerly assigned to and handled by clerks.

The majority herein erred in straying from the question it recognized was at issue and basing its decision on the erroneous premise that as the office boy does the same work as Wasiluk performed "he should have been compensated at the same rate of pay under the provisions of Rules 48 and 49, current agreement."

In construing rules similar to Rules 48 and 49, supra, this Division held as follows in Award 6407:

"May an established position be rerated by the Carrier upon a showing that the old position, because of a change in operations, is no longer properly described? Because we note that Rule 85 depends on the purpose in forbidding changes we believe that one of the tests to apply to the question is the good faith exhibited by the Carrier. If the realities of the situation are such that only good management motives are apparent, then the Carrier is permitted to exercise its discretion. If the change is proven to have been only

to line up the rate with the actual duties and is not intended as an evasion of the rules or an attempt to place the work on another outside the Agreement, as in some of the cited Awards, it is within the purview of Rules 72 and 75."

For the above reasons we dissent.

H. W. Castle
R. M. Butler
E. T. Horsley
C. P. Dugan
J. E. Kemp