

Award No. 10419

Docket No. CL-9689

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. The Carrier violated and continues to violate the Clerks' Rules Agreement when as a result of the abolishment of baggageman positions at Madison, Wisconsin it established new positions under a different title and classification to evade the application of the Rules and denied non-clerical employees non-clerical positions in accordance with their non-clerical seniority.
2. The Carrier shall now be required to establish positions and work at Madison, Wisconsin in conformity with the provisions of the Clerks' Rules Agreement, confining clerical work to clerical positions and non-clerical work to non-clerical positions.
3. Compensate Employee M. J. Rommelfanger at the time and one-half rate of his regular yard clerk Position No. 2 for a two hour call for each day subsequent to June 28, 1956 he is required to suspend work on his regularly assigned yard clerk Position No. 2 to perform baggage work that would result in overtime for non-clerical employees.
4. Compensate Employee W. H. France at the time and one-half rate of his regular yard clerk Position No. 3 for a two hour call for each day subsequent to June 28, 1956 he is required to suspend work on his regularly assigned yard clerk Position No. 3 to perform baggage work that would result in overtime for non-clerical employees.
5. Compensate Employee J. F. Rommelfanger at the time and one-half rate of his regular yard clerk Position No. 4 for a two hour call for each day subsequent to June 28, 1956 he is required to suspend work on his regularly assigned yard clerk Position No. 4 to perform baggage work that would result in overtime for non-clerical employees.
6. Compensate Employee J. L. McKune at the time and one-half rate of his regular Relief Yard Clerk Position for a two hour call for

each day subsequent to June 28, 1956 he is required to suspend work on his regularly assigned Relief Yard Clerk Position to perform baggage work that would result in overtime for non-clerical employees.

7. Compensate Employee R. C. Everhart for eight (8) hours at the pro-rata rate of baggageman position for each day subsequent to June 28, 1956 that a clerical employee performs baggageman duties.

8. Compensate Employee P. G. Moen for eight (8) hours at the pro-rata rate of baggageman position for each day subsequent to June 28, 1956 that a clerical employee performs baggageman duties.

9. Compensate Employee J. Zimmerman for eight (8) hours at the pro-rata rate of baggageman position for each day subsequent to June 28, 1956 that a clerical employee performs baggageman duties.

10. Compensate Employee John Assen for a two hour call at the time and one-half rate of his regular caller's position for each day subsequent to June 28, 1956 he is not called to perform baggageman work and a clerical employee is assigned these non-clerical duties.

EMPLOYES' STATEMENT OF FACTS: Prior to the time this dispute arose, the Carrier maintained the following baggageman positions at Madison, Wisconsin:

Pos. No.	Assigned Hours	Assigned Days	Assigned Rest Days	Occupant
119	4:00 P.M.-1:00 A.M.	Mon-Fri	Sat & Sun	K. J. Slane
30	4:30 P.M.-1:30 A.M.	Wed-Sun	Mon & Tues	R. C. Everhart
39	10:30 P.M.-7:30 A.M.	Thurs-Mon	Tues & Wed	R. G. Moen
Rel Bgmn		Sat-Wed	Thurs & Fri	J. Zimmerman

The principal duties of the above positions as assigned by bulletin were handling mail and baggage. Those positions, due to the nature of the duties performed, were considered as non-clerical positions and the employees secured those positions on the basis of their non-clerical seniority dates.

The Carrier also maintained a clerical position of Baggage Agent at Madison, Wisconsin which was assigned as follows:

Pos. No.	Assigned Hours	Assigned Days	Assigned Rest Days	Occupant
29	8:30 A.M.-1:30 P.M. 2:30 P.M.-5:30 P.M.	Mon-Fri	Sat & Sun	W. D. Meuer

The duties of that position as assigned by bulletin were baggage work and handle U. S. mail.

In addition, Employee Roger Goodland was regularly assigned to perform tag-end relief baggageman work on Position #119 on Saturday and on Position #39 on Tuesday.

The Carrier also maintained the following yard clerk positions at Madison, Wisconsin:

It will be noted that the volume of mail and baggage work declined to the point where it was not sufficient to provide a full-time position in each classification (clerical or non-clerical) and the work was consolidated. It will also be noted that Rule 2 (e) provides that "clerical work in excess of four (4) hours will not be assigned to more than one position on the same shift not classified as clerk". In other words, where the volume of work is not sufficient to justify a full-time clerical position, clerical work up to 4 hours on the same shift may be assigned to more than one non-clerical position. There can be no doubt about the fact that without any such stipulation with regard to non-clerical work, in this case where the volume of work was not sufficient to provide a full-time non-clerical position, non-clerical work at least up to four hours was properly assigned to clerical positions on the same shift.

In this case, even if we were to consider all of the mail and baggage handling work as non-clerical work (which we do not concede because the baggage agent, classified as a clerical position, has always been assigned to and performed the work of handling mail and baggage) it will be readily apparent there is not sufficient mail and baggage handling work to provide a full-time position and the amount of such work assigned to clerical positions is far less than four hours on the same shift.

Perhaps we should add that the only non-clerical positions in existence at Madison, Wisconsin are two caller positions in the Freight House who are assigned 8:00 A. M. to 5:00 P. M. There are no other non-clerical positions in existence at Madison from which it will be apparent there are no such positions on the second and third shifts or in other words, between 5:00 A. M. and 8:00 A. M.

Contrary to the allegation of the employees, there were no positions established and there have been no rates reduced or changed. All positions to which the small amount of mail and baggage handling work has been assigned throughout the 24-hour period were in existence prior to June 28, 1956 and there has been no change in rate of any of those positions. The rate of the baggage agent was, as shown, \$15.12 per day, the rate of each yard clerk position was, as shown, \$15.036 per day and the rate of the assistant warehouse foreman was \$15.408 per day. It will be noted that the rate of the abolished baggagemen positions was \$14.238 per day.

It is the Carrier's position that the changes made necessary by the decline in passenger service and the volume of mail and baggage at Madison have been strictly in conformity with the provisions of Rule 2 (e), there has been no violation of any provision and we respectfully request that the claim be denied.

All data contained herein has been presented to the employee.

(Exhibits not reproduced)

OPINION OF BOARD: Prior to June 28, 1956, the Carrier maintained the following positions at Madison, Wisconsin:

- 3 Baggagemen
- 1 Relief Baggage man
- 1 Baggage Agent

The principal duties of the three regular and relief Baggagemen were handling mail and baggage. They were non-clerical positions. The Baggage Agent was a clerical position assigned to baggage work and handle U. S. mail.

At the same time the Carrier maintained four yard clerks classified as clerical positions whose duties were "routing yard clerk work."

On or about June 28, 1956, the Carrier abolished the three regular and relief Baggage men's positions and assigned the mail and baggage handling work to the yard clerks. The jobs were rebulletined and the principal duties were changed to:

"Yard Clerk Work; Handle mail and baggage."

At the same time the Carrier changed the scheduled hours of the Baggage Agent and rebulletined the job to read:

"Handle mail and baggage and keep necessary records and answer correspondence pertaining to mail and baggage handled at the station."

Rule 1 -- Scope of the existing Agreement lists clerks in Group 1 and mail and baggage employees in Group 2. Rule 2(d) of the same Agreement provides:

"The employees will be ranked on the roster in accordance with their clerical date. Those employees who have only a miscellaneous (non-clerical) date will be given a clerical date as of January 16, 1946 and ranked below the clerical employees on the roster in accordance with their rank on the present miscellaneous roster. Where a seniority district includes both clerical and non-clerical employees, those employees who have only a clerical date will be given a non-clerical date as of January 16, 1946. The numerical "non-clerical" rank of all employees will be shown in the last column of the roster beginning with the senior miscellaneous employee through the youngest miscellaneous employee and then, in order of their clerical dates, those who now have only a clerical date. Employees hired on and after January 16, 1946 will be given the same date in both the "clerical" column and "non-clerical" column.

NOTE: The allowance of an arbitrary clerical date to non-clerical employees will in no way form the basis for the application of the provisions of the "Sick Leave" Agreement insofar as such employees are concerned. In other words, for each employee for whom an arbitrary clerical seniority date is allowed in a seniority district, there will be maintained a record of the date on which such employee is first assigned by bulletin to a position (in that seniority district) included within Groups 1 (a) or 1 (b) of Rule 1 (a), and that date will govern in the application of the provisions of the "Sick Leave" Agreement.

Rule 2 (e) says:

". . . Where the volume of work is not sufficient to provide a full time position in each classification (clerical or non-clerical) the work can be consolidated . . ."

At the time this changed work assignment took place, there were also full time non-clerical positions in the Carrier's freight house in Madison.

There is little question that by the terms of the Agreement and by the practice of the parties that employees in Group 1 and Group 2 are "not to be used whimsically and interchangeably in performing the work of the other group" (Award 5895). This is fully established not only by Award 5895 (Jasper) but also by Awards 4572 (Whiting), 5578 (Whiting) and others. In each of the Awards cited above, however, employees intermittently or regularly performed the work of an employee in another seniority group when work was suspended in one seniority group to make work for an employee in another seniority group. In Award 5895 (Jasper) the Board held that:

"The work belonging to Groups 2 and 3 was entitled to be done by a man from Groups 2 and 3, if available. As has been said, a Group 1 man cannot be used interchangeably to perform the work of the other Group, nor could a Group 2 and 3 man be used to perform the work of Group 1."

In Award 4572 (Whiting) the Board said:

"Generally it is the suspension from an employee's regularly assigned duties, for the purpose of performing other duties, which gives rise to valid claims for compensation for the performance of other duties."

The Board in that case held that there was no suspension from the regular work and that the Scope Rule "does not, nor does any other rule of the Agreement prohibit the Carrier from assigning other duties to such employees." The same principle was confirmed by the Board in Award 5578 (Whiting).

The situation in this case is different. Here the Carrier combined clerical and non-clerical work as provided in Rule 2(e) quoted above. The issue revolves around the question whether the employees in the freight house and those in the passenger station comprise a single unit or "point" as contended by the Organization, or whether clerical and non-clerical jobs may be combined in any work situation, as contended by the Carrier.

The Carrier makes much of the word "where" in the second sentence of Rule 2(e). The Board agrees with the Carrier that "where the language used is susceptible to two meanings, one of which would lead to a logical sensible result, and the other to an illogical or unreasonable result, the former interpretation is to be preferred as the result intended by the contracting parties." (Award 10235-Carey). But the Board cannot agree that the "logical and sensible result" of the language in Rule 2(e) is confined to a "work situation". Rule 2(e) does not give either party the right to ignore or circumvent the seniority provisions of the contract. The Carrier cannot, in its discretion, combine clerical and non-clerical jobs as it sees fit and deprive employees in the stated seniority lists of an opportunity to perform the work and, perhaps, receive a higher rate of pay.

The handling of mail and baggage required about 5 hours and 40 minutes in a 24 hour period and not more than a maximum of 3 hours and 40 minutes in the most favorable combination of any shift. Rule 2(e) provides that clerical and non-clerical positions may be consolidated where "the work volume is not sufficient to provide a full time position in each classification (clerical or non-clerical)." The circumstances and conditions for mail handling in this case specifically fall within the meaning and intent of said Rule 2(e). Since the volume of work was not sufficient to provide for full time baggagemen (non-clerical) the Carrier did not violate Rule 2(e). The essential duties of

the Baggage Agent were not changed. He performed both clerical and non-clerical work before and after July 28, 1956.

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 on the basis of the record in this case the Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1962.