

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

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

(1) The Carrier violated agreement rules when it on May 2, 1938, arbitrarily reduced the daily rate of pay of position of Secretary to Freight Claim Agent from \$6.0862 per day to \$4.902 per day and that

(2) The Carrier shall be required to reinstate the rate to proper basis and to reimburse the incumbent for wage losses sustained through such rules violation.

EMPLOYEES' STATEMENT OF FACTS: From January 1930 through April 1938 there was maintained at Columbus, Mississippi, position classified as Secretary to Freight Claim Agent rate \$5.6862 per day from January 1930 through July 1937 then at \$6.0862 beginning August 1, 1937 which was in line with the General Wage increase of 40 cents per day effective August 1, 1937.

Such classification was established by agreement between the Carrier and the Brotherhood as result of Agreement effective July 1, 1922, at which time the position was held by Miss Annie Mae Coleman who was continued on the position up to and including Saturday April 23, 1938, when Miss Coleman resigned and was succeeded by Mr. J. R. Burch, the present incumbent, on Monday April 25, 1938. Mr. Burch worked from April 25, 1938 through Saturday April 30, 1938, six days, for which he was paid at rate of \$6.0862 per day, then beginning Monday May 2, 1938, Mr. Burch's pay was arbitrarily reduced and was based on daily rate of \$4.902.

POSITION OF EMPLOYEES: The position in question come under the designation of "personal Office Force," Rule 2, which, omitting portions not pertaining to position in question, reads:

"The following positions shall constitute personal office forces, and shall be subject to the exceptions made herein."

"Office of Freight Claim Agent"

"1 Secretary."

The only "exceptions made herein" to Rule 2 are in Rule 6, PROMOTION BASIS, and Rule 12, BULLETINS.

"Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

OPINION OF BOARD: This is a claim by the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Columbus and Greenville Railway Company, Carrier, violated the rules of the prevailing agreement on May 2, 1938, by reducing the rate of pay of the position of Secretary of Freight Claim Agent at Columbus, Mississippi, from \$6.0862 to \$4.902 per day, and it is sought that the carrier be required to compensate the holder of the position for the difference between the two rates for the time it is claimed the rules in this respect have been violated.

An examination discloses sufficiently that the position comes within the agreement but it is not controlled or covered by seniority rule, nor in case of vacancy therein must it be bulletined for bids. The carrier has the right to fill a vacancy in the position from within or without the organization as it may choose. However, after rate of pay is established such rate comes under the agreement.

Anna May Coleman was the occupant of the position from July 1, 1922, to April 23, 1938, without interruption.

On April 23, 1938, Miss Coleman resigned her position and for the period from that date to May 2, 1938, the present incumbent, J. R. Burch, performed the duties of the position at the rate of \$6.0862 per day. On May 2, 1938, he was regularly assigned to the position of Secretary to Freight Claim Agent at the rate of \$4.902 per day at which rate he has since been paid.

In defense of its action the carrier urges that under the facts and circumstances by reason of distribution of work which had been performed by Miss Coleman a new position was created for which it had the right in the first instance to fix the rate of pay.

In the view taken of this record it is concluded that this contention of the carrier has not been sustained and that the position of Secretary to Freight Claim Agent, as originally constituted, remained and was filled by the assignment of Burch. This conclusion renders unnecessary any quotation of rules, and leaves only analysis and application of the further facts disclosed by the record.

It is pointed out that the position as originally constituted carried a rate of \$4.1176 per day, also that by reason of added duties given to Miss Coleman, at the time a general increase went into effect August 1, 1937, Miss Coleman was receiving \$5.6862 per day. Thereafter with the increase she received \$6.0862 per day. This is borne out by the record.

The Carrier points out substantially, and in this it is in some respects corroborated by Burch, that the difference between the base rate for the position, which was \$4.1176 before August 1, 1937, and \$4.5176 thereafter, and \$6.0862 was accounted for by duties outside of and not a part of the necessary or incidental duties of the position of Secretary to Freight Claim Agent.

If this is true, and we must so accept it in the absence of showing to the contrary, then we are confronted with the proposition that originally the base pay of the position was \$4.1176 to which in 1937 was added 40 cents per day which would make the true base in May, 1938, \$4.5176, a rate below that which was actually paid to the new occupant of the position.

Whether Miss Coleman was or was not performing duties in excess of those properly belonging to her position and which properly belonged to some one else covered by the agreement may not be considered here.

The claim should be denied.

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 employes involved in this dispute are respectively carrier and employes 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1942.