

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

(M. P. Calloway Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The position of Chief Delivery Clerk, occupied by Clerk F. E. Bernier, should be compensated at \$225.96 per month instead of \$193.96 per month, and that,

(2) Clerk F. E. Bernier shall now be compensated for the difference between the salary he has actually received and the salary that he properly should have received, this difference being \$32.00 per month, effective as of November 1, 1944 and thereafter until claim is satisfactorily adjusted.

EMPLOYES' STATEMENT OF FACTS: Prior to November 1, 1944, or thereabout, the duties attached to the position of Chief Delivery Clerk, incumbent F. E. Bernier, salary \$193.96 per month were as follows:

- Deliver freight to transfer companies and customers
- Handle inbound, over and astray freight
- Answer telephone in Delivery Department and give information concerning inbound freight
- Maintain a check of "on hand" freight in warehouse
- Check freight out of cars on transfer
- Check freight from warehouse into cars
- Mark up shipping tickets with car numbers
- Assist Warehouse Foreman in Office
- Receive freight from shippers, etc.
- Answer telephone in Receiving Department and Warehouse Foreman's Office

Hours of duty: 7:30 A. M. to 4:30 P. M., one hour for lunch
Sunday, Day of Rest.

Subsequent to November 1, 1944, or thereabout, additional duties consisting of phases of work performed for many years by the Chief Claim Clerk at salary of \$225.96 per month were transferred to the Chief Delivery Clerk (duties outlined above) said work being evidenced by Exhibits 1 to 31 and photostatic copies marked 1 through 10 attached hereto and made a part

record in Mr. Bernier's handwriting. It will be seen from these letters that this work was done on this position from as early as 1929 up to the present, the exhibits having been selected from the years 1929, 1930, 1933, 1934, 1935, 1937, 1940 and 1945.

When the claim was appealed to the Director of Personnel the evidence did not sustain the Clerks' claim and it was declined at conference on August 6, 1945. Nothing further was heard from the claim until General Chairman Clegg requested, under date of February 16, 1946, that the ten photostatic copies of exhibits presented in this case be returned to him. This letter was replied to under date of February 18, stating that the writer would have Mr. Charles Woods, Superintendent of Station Operations, go to Atlanta and make a further check in order to see whether or not any work had actually been transferred from the position of Chief Claim Clerk. Mr. Woods went to Atlanta and made a check, and quoted below is his finding in connection with this check:

"As to whether or not work of the claim department, which was not formerly performed by delivery clerk, was transferred to the delivery clerk in recent years, I found nothing to substantiate this claim. I talked to C. H. Medlock and E. E. Bennett and each stated that the work now done by the delivery clerk was not different from that done years ago, and I know from personal knowledge that there has been no change in the duties of this position."

The Employees claim a violation of Rule 57, which the Carrier contends was not violated as the position of Delivery Clerk is rated, and not the employee, nor has there been any transfer of rates from one position to another. There have not been any positions discontinued or new ones created under the same or different titles, nor does paragraph (c) of this rule apply.

Rule 69 has not been violated as this employee was neither temporarily nor permanently assigned to a higher rated position, nor was he assigned higher rated work. There are three positions in the Claim Department—Chief Clerk, paying (new rates) \$263.70, Assistant Claim Clerk, \$231.70, and Trace Clerk, \$226.70. Even if the Employees were correct—which they are not—that the work in question belongs in the Claim Department, the fact is that when the letters or papers requesting delivery or other records are returned to the Claim Department very few of them are answered by the Chief Claim Clerk (whose salary is being claimed), the vast majority being answered by the Assistant Claim Clerk, salary \$231.70—the same as Delivery Clerk's salary—and the Trace Clerk, salary \$226.70—less than that of Delivery Clerk Bernier.

The Carrier has proved that the claim is without merit in that no rule of the Agreement has been violated, and respectfully asks the Honorable Board to so render a decision.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee makes this claim on behalf of F. E. Bernier, Chief Delivery Clerk, for the difference in salary between what he actually received and what they claim he should have received because of the work that he was required to do.

The basis of the claim is the Committee's contention that commencing about November 1, 1944, Bernier performed, and there was transferred to him, phases of work which, for many years, had been performed by the Chief Claim Clerk, who is paid a higher salary; that this constitutes a violation of Rules 57, 58 and 69 of the parties' effective agreement, and that Claimant is entitled to the higher rate of pay.

Rule 69, which is applicable, provides:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

"A 'Temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

This case presents primarily a fact question for, under the parties' agreement, the Carrier cannot assign a class of work in one category to that of a lower rated group without violating its terms and being liable for the higher rate.

The main contention of the Committee is that Asbury, Chief Claim Clerk, prior to his retirement personally secured from the delivery department records certain information on overs, shorts, damaged and astray freight together with copies of bills, all relating to the basing and handling of claims; and that since his retirement this work has been transferred to and required to be done by Claimant, who is the Chief Delivery Clerk.

The Carrier contends that letters and other forms of communication have always been sent to the Delivery Clerk for noting information thereon, not for answering, and for the preparation of copies of delivery receipts, when necessary. That this information is obtainable only from the delivery records and has always been a part of the delivery clerk's duties.

The record sustains the Carrier's contention. It establishes that the Chief Delivery Clerk has always furnished this information, in the manner it is now being done, from the records available in his office, of which he is in charge. It has always been a part of the duties of his office. While there may have been occasions when Claimant performed some incidental duty of the higher rated office, however, they were not of such nature or continuous character as to entitle him to the higher rate of pay. The claim is, therefore, 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 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 has not violated the Agreement.

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 December, 1947.