

Award No. 6545
Docket No. CL-6487

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

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

(1) The Clinchfield Railroad Company violated the Clerk's Agreement on July 16, 1952, when it failed to Bulletin the new position of Secretary-Stenographer established in the Freight Claim Agent's office.

(2) The Clinchfield Railroad Company shall be directed to bulletin the new position of Secretary-Stenographer at the rate of pay effective July 16, 1952, of \$295.00 per month, plus subsequent rate increases or decreases in accordance with the wage agreement effective March 1, 1951.

(3) Miss M. L. Beverly shall now be paid one (1) day's pay at the rate of time and one-half for each Saturday that her rate of pay has erroneously been comprehended upon six (6) days per week, twenty-five and one-half days or two hundred four (204) hours per month.

(4) The Clinchfield Railroad Company shall now pay to the successful applicant and other affected employees any wage loss sustained account of said violation of the Clerk's Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 16, 1952, Mr. L. R. Beals occupied an official position designated as Car Service and Claim Agent. By reference to Exceptions listed under the Scope Rule there appears Chief Clerk—Car Service Department (occupied by Mr. J. A. Davis), Chief Clerk—Claim Department (occupied by Mr. O. F. Guinn), Stenographer—Car Service Department and Claim Department (occupied by Miss Reba Pratt).

July 12, 1952, the General Manager issued the following notice:

Erwin, Tennessee
July 12, 1952

The following appointments are made effective July 16, 1952:

Mr. L. R. BEALS, Personnel Officer and Assistant to General Manager with office in Erwin, Tennessee.

Paragraph (2) of Employees' Statement of Claim is without any merit whatever and is misleading to the Board. The rate of pay of \$295.00 per month, effective July 16, 1952, is a rate contemplating an excepted position not subject to the 40-hour week and reflects payment for all services rendered on a position subject to call at any time, without pay for overtime. This position is not subject to any rule in the agreement, nor to Rule 38 thereof, which reads as follows:

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

Employees have no right to ask your Honorable Board to establish the same rate of pay for a bulletined position that has been established by Carrier for an excepted position, and Carrier respectfully insists that the Board has no jurisdiction over the matter set forth in Paragraph (2).

Paragraph (3) of the Employees' Statement of Claim is not understood by the Carrier. M. L. Beverly, the incumbent of the excepted position in the office of Freight Claim Agent, is paid on a monthly basis for all services rendered. A review of the records reveals that she has at no time rendered service on more than 40 hours per week, although subject to call for such service and available for it. Neither has this employee been required to work on Saturdays, though subject to call at any time, and it is further submitted that her rate of pay has not been erroneously comprehended.

With respect to Paragraph (4), the Carrier states that no application for this excepted position has been received from any other employee; that the excepted position is not and has not been subject to bulletin rules; and further, that no wage loss has been sustained by any employee.

The claim of Employees, and each and every part thereof, is wholly without merit. It is violative of every principal of collective bargaining, and refutes an agreement made in good faith and in conformity with the agreement between the parties. The claim should, in all respects, be denied, and Carrier respectfully requests your Honorable Board so to hold.

All matters herein contained have been heretofore presented to claimants or their duly authorized representatives, and have been made a part of negotiations on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement as revised September 1, 1949, excepts from its scope the position of "Stenographer—Car Service Department and Claim Department." That position was there shown under the Car Service and Claim Agent but in prior agreements has been listed under various other officials then in charge of those departments. Carrier states it has always been located in the Claim Department.

On July 16, 1952, the occupant of that position was promoted to a position as Secretary in the Office of the General Manager and Miss M. L. Beverly was appointed to fill the position so vacated. The Organization alleges that there was no such vacancy but that position is not involved in the claim. Simultaneously the position of Car Service and Claim Agent was discontinued and positions of Freight Claim Agent and Car Accountant established. The stenographic position mentioned was located in and then came under the jurisdiction of the newly appointed Freight Claim Agent.

These changes were discussed by Carrier with the Vice General Chairman in the absence of the General Chairman prior to being made and he agreed that the two secretarial positions could properly be filled by appointment.

It fairly appears that this stenographic position was excepted from each agreement although shown as attached to various officials over the

years. It appears that when an agreement was made or revised the position was described as attached to the official then in charge of car service and claims. The reorganization of Carriers officials and a change of name of the official in charge of this position does not destroy the position nor change its excepted character. There is no showing that the work of the position has changed so that the purpose served by its exception no longer requires it to be excepted. Hence we think the claim is without merit.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.