

Award No. 10452

Docket No. CL-9976

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

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 Carrier violated and continues to violate the Rules of the Clerks' Agreement, affective December 1, 1956, in assigning and requiring the assigned occupants of regular and relief clerks positions at Cedartown, Georgia designated as clerks on 7 day positions higher rated duties of similar kind and class to those assigned to and performed by Crew Dispatchers' positions at Columbus, Georgia in this same Seniority District and failing to compensate the occupants of these positions as Crew Dispatchers and that, therefore,

(2) Mr. W. E. Adams, assigned hours 1:30 P. M. to 10:30 P. M., one hour for lunch, Mondays through Fridays, rest days Saturdays and Sundays, shall now be compensated for the difference of salary of \$366.61 per month and \$399.32 per month (subject to cost of living adjustment) retroactive to January 1, 1957 and continuing in effect until correct salary is paid, and that,

(3) Mr. E. W. Cowan, assigned hours 3:00 A. M. to 12:00 noon with one hour for lunch, assigned Saturdays through Wednesdays with rest days of Thursdays and Fridays, shall be paid the difference between salary of \$357.19 per month and \$399.32 (subject to cost of living adjustment) per month retroactive to January 1, 1957 and continuing in effect until proper salary is allowed, and that,

(4) Mr. C. H. Cox, Relief Clerk, working Wednesdays from 8:00 A. M. to 5:00 P. M., one hour for lunch; Thursdays and Fridays from 3:00 A. M. to 12:00 noon relieving Clerk E. W. Cowan, one hour for lunch; and Saturdays and Sundays from 1:30 P. M. to 10:30 P. M., one hour for lunch, relieving Clerk W. E. Adams; rest days Mondays and Tuesdays; shall now be paid the difference between salary of \$356.64 per month and \$399.32 per month (subject to cost of living factor) and that,

(5) The successors, if any, of the foregoing employees shall be compensated in like manner.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to August 1, 1956 Train Dispatchers at Cedartown, Georgia had performed much of the clerical work required in connection with handling train crews at that point and typical of this are the instructions contained in bulletin issued August 1, 1956 by Mr. H. L. Bishop, Jr., Assistant Superintendent, copy of which bulletin is hereto attached and identified as Employees' Exhibit No. 1.

However, effective December 1, 1956, the Clerk's Agreement was revised and in recognition of this revision, the Carrier's Officer, Mr. Bishop, instructed that all of the work at Cedartown, Georgia in connection with handling of train crew performed exclusively by Clerks at that point, these Clerks being Clerks W. E. Adams, E. W. Cowan, and C. H. Cox.

Under date of March 20, 1957, the General Chairman, having been apprised of the foregoing changes and having knowledge of claims for the difference between rates of pay as hereinbefore set forth and the proper rate of \$399.32 per month, wrote Mr. H. L. Bishop stating that claims filed by Clerk C. H. Cox at Cedartown, Georgia were legitimate and should be paid, and copies of this correspondence are hereto attached and identified as Employees' Exhibits Nos. 2, 2 (a), and 2 (b) respectively.

Again on March 20, 1957, the General Chairman wrote Mr. Bishop in connection with claims of Clerk E. W. Cowan which were similar to those outlined in Exhibits 2, 2(a), and 2 (b) and copies of this correspondence are self-explanatory and are hereto attached and identified as Employees Exhibits No. 3, 3 (a), and 3 (b) respectively.

Yet, again on March 20, 1957, in order to thoroughly acquaint Mr. Bishop with what the System Committee had in mind, the General Chairman outlined in detail all of the work being performed by Clerks E. W. Cowan, W. E. Adams, and C. H. Cox at Cedartown, Georgia and details were given of the salaries and duties of each position and copy of this letter which is self-explanatory is hereto attached and identified as Employees' Exhibit No. 4

Previously, under date of March 15, 1957, the General Chairman had also written Mr. Bishop in connection with duties performed by Mr. C. H. Cox Swing Clerk, Cedartown, Georgia, and copies of this correspondence are hereto attached and identified as Employees' Exhibit No. 5, 5(a), and 5 (b).

On March 22, 1957, the General Chairman wrote Mr. Bishop and copies of this letter which affected Mr. Cowan are hereto attached and identified as Exhibits No. 6, 6 (a), and 6 (b) respectively. Also attached are copies of Mr. Bishop's letters of March 27, 1957 to Mr. C. H. Cox which are self-explanatory and are identified as Employees' Exhibit No. 7, and 7 (a) respectively. Also to Mr. Cox are copies of Exhibits No. 8 and 8 (a).

Under date of March 29, 1957, Mr. Bishop replied to the General Chairman's letters of March 15 and 20, 1957 in connection with claim for Mr. Cox and suggested conference in Columbus for Monday, April 15, 1957, for the purpose of discussing this matter and copies of this letter is hereto attached and identified as Employees' Exhibit No. 9. Also, on March 20, 1957, Mr. Bishop wrote a similar letter to the General Chairman in connection with claims in case of Mr. Cowan and copy of this letter is attached and identified as Employees' Exhibit No. 10.

therefore, Carrier is at a loss to understand the basis of the Employees' "claim" for an upward adjustment in the rates of pay of these three Claimants. While not directly involved, neither has there been any change whatsoever made in the assignment or duties of the Mechanical Department Clerk — in a different seniority district — since the job was mutually agreed to and established by Bulletin No. C-136-50, effective August 16, 1950. In fact, Mr. W. P. Watson bid the job in and has held it ever since. Copy of that Bulletin was sent to the Organization.

Summarizing, there is no violation of the rules of the effective Agreement, and second, there is no justification whatever for Carrier to be harnessed with the burden as outlined in the instant claim to this Board. We have about as many rates of pay as we do Clerks on this property, and just because bona fide full-time Crew Dispatchers at Columbus, Ga. (headquarters of the Columbus Division), where many, many more crews and trains are involved, make more than Claimants, that is no basis for Carrier to increase the rates of pay of Claimant Clerks at the comparatively small Cedartown yard office. Therefore, Carrier respectfully submits that your Honorable Board should deny the claim of Employees in its entirety.

As stated, after the Employees have set forth their specific claims to this Board, Carrier will categorically refute, and prove its refutation, of each and every one of them.

All data submitted in support of Carrier's position in this case has been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of the dispute.

OPINION OF BOARD: The Claimants work at Cedartown, Georgia an intermediate point on Carrier's Columbus, Georgia Division.

The Claimants were on January 1, 1957 regularly occupants of clerical positions at the Cedartown Yard Office. The monthly rates of pay of positions of "Crew Dispatchers" located at Columbus, Georgia is \$399.32; the monthly rates of pay of Claimants are as follows:

"INCUMBENT	TITLE OF POSITION	RATE OF PAY
W. E. Adams	Yard Clerk	\$366.61 per mo.
E. W. Cowan	" "	357.19 " "
C. H. Cox	Relief Clerk	356.64 " " "

Prior to December 1, 1956 the Claimants performed various duties of clerical nature. In addition and jointly with Train Dispatchers they performed Crew Dispatchers work. On August 1, 1956 at the request of the General Chairman of the Organization the Carrier agreed to relieve the Train Dispatchers and turn over all Crew Dispatchers work to the clerks.

On December 1, 1956 the Clerks Agreement with the Carrier was revised and the position of Crew Dispatcher was listed under the Scope Rule of the Labor Agreement.

On January 1, 1957 the Claimants filed these grievances claiming that the contract effective December 1, 1956 had been violated in assigning and requiring the Claimants to perform higher rated duties of similar kind and class to that performed by Crew Dispatchers at Columbus, Georgia in the same Seniority District and failing to compensate the occupants of these positions as Crew Dispatchers. They requested that they be compensated for the difference between their salaries and the salary paid to Crew Dispatchers at Columbus, Georgia.

The Organization bases its claim on the violation of Rules 1 and 34 of the Agreement.

It maintains that the "Yard Clerk" and "Relief Clerk" which are positions held by the Claimants perform exact same duties as do the incumbents of positions titled "Crew Dispatchers" located at Columbus, Georgia, which positions are in the same Seniority District and have a higher rate of pay.

The Carriers position is that it did not violate Rules 1, 34 or 59 because (1) Claimants were performing Crew Dispatchers work as part of their regular duties long prior to December 1, 1956 the effective date of the revised Agreement, (2) Rule 34(a) provides that the rates of pay now in effect are hereby made a part of this Agreement, (3) Claimants have not at any time since December 1, 1956 been either temporarily or permanently assigned to higher rated positions and, (4) the claim is simply a request for an upward adjustment in the established rates of pay of positions occupied by Claimants which is a matter not within the jurisdiction and authority under the Railway Labor Act.

From the record in this case it is clear that at the date of the filing of the grievances the work of crew and engine dispatching was covered under the Scope of the Agreement dated December 1, 1956 between the parties.

Further it is clear that all the duties of crew and engine dispatchers at Cedartown, Georgia were performed by the Claimants and that such duties and responsibilities were the same as those performed by Crew Dispatchers at Columbus, Georgia in the same Seniority District. In this connection the Carrier pointed out that the Crew Dispatchers at Columbus, Georgia were full time dispatchers and that many more trains and crews are involved.

Since the work in question is covered by the Scope of the Agreement and since the Claimants are performing the work of Crew Dispatchers a higher rated position it is our opinion that the issue in this case is whether or not they are entitled to the higher rate of pay under Rule 34 of the Agreement. The pertinent parts of Rule 34 reads as follows:

"(c) The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. Where no similar position exists in the seniority district, rates will be established by negotiation.

"(d) 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."

It has been held by this Board that it is not necessary to perform all the duties and responsibilities of the higher rated position to be entitled to the higher rate of pay. See Awards No. 4669 and 6129.

We have given careful consideration to the record and facts in this case and it is our judgment that the Claimants are performing work of the higher rated position to the extent that they are entitled to the higher rate of pay as claimed under Rule 34 of the Agreement. Therefore the contract was violated.

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

Therefore the contract was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1962.

DISSENT TO AWARD NO. 10452, DOCKET CL-9976

This award is predicated on an erroneous interpretation of Rules 1, 34, and 59 of the revised agreement which became effective on December 1, 1956, as applied to the evidence of record in this case.

The Opinion lists the established rates of pay of the three clerical positions occupied by claimants at Cedartown yard office, and correctly states that crew dispatching was one of the duties regularly performed by claimants prior to December 1, 1956. For many years it was performed by clerks and train dispatchers until August 1, 1956, when "at the request of the General Chairman of the organization, the carrier agreed to relieve the train dispatchers and turn over all crew dispatchers work to the clerks." Thus, on and after August 1, 1956, claimants continued to perform crew dispatching work at the established rates of their respective positions, the only difference being that train dispatchers no longer participated. This change occurred four months prior to the effective date of the revised agreement.

The next paragraph of the Opinion is the statement that "On December 1, 1956 the Clerks Agreement with the Carrier was revised and the position of Crew Dispatcher was listed under the Scope Rule of the Labor Agreement." One would assume from this that the parties must have incorporated into the revised agreement some new provision which changed the status of claimants' positions as of 12:01 A. M., December 1, 1956. There was no such revision. Yet the Board accepts the organization's theory that carrier was in compliance with the terms of the agreement until Midnight, November 30, 1956. The following excerpt from the organization's reply submission is typical of its basic contention:

"* * * and until the agreement of December 1, 1956 became operative, no doubt this division of work between the dispatchers and clerks may have been legitimate, but when the first paragraph of Rule 59 hereinbefore commented upon was adopted as of December 1, 1956, it is equally clearly obvious that beginning December 1, 1956 there was a violation of the Clerks Agreement in that all of the work of crew dispatchers, as spelled out in Rule 1, paragraph (b) as referred to in paragraph (c) of Rule 1, became exclusive work which should have been performed by crew dispatchers only." (Emphasis ours.)

Rule 59 of the revised agreement simply provides, in pertinent part, that "This agreement shall be effective as of December 1, 1956, superseding all

Serial No. 200

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 10452

Docket No. CL-9976

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Central of Georgia Railway Company.

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The interpretation placed upon the award by the Organization is the correct interpretation of the award.

It is clear from the record that this is a continuing claim and there is no doubt but that the Organization was making claim for all employees who might occupy the specific positions at Cedartown, Georgia from and after the effective date of the claim.

The intent of the award was that all employees performing the work of these positions are entitled to the higher rate of pay.

Referee Robert J. Wilson, who sat with the Division, as a member, when Award No. 10452 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 12th day of June 1963.