

Award No. 13774
Docket No. CL-13800

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5284) that:

(1) The Carrier violated the Clerks' Agreement when, effective May 15, 1962, it arbitrarily and unilaterally, without conference or agreement, established a position of General Utility Clerk in the Office of Purchasing Agent, at a rate of \$470.00 per month, without regard to Rule 34 — RATES OF PAY.

(2) The rate of the position of General Utility Clerk shall be corrected to \$500.39 per month, plus adjustment of \$17.89 per month accorded by the Agreement of June 5, 1962, retroactive to May 15, 1962, the date such position was established.

(3) Mr. J. E. Cannon, the successful bidder and present occupant of position of General Utility Clerk, and/or his successor or successors, if there be any, shall be paid the difference between the erroneously established salary of \$470.00 per month and \$500.39 per month, plus adjustment of \$17.89 per month retroactive to May 15, 1962, and continuing in effect until the rules agreement is complied with.

EMPLOYEES' STATEMENT OF FACTS: On May 10, 1962, Mr. J. R. Beach, Purchasing Agent, Savannah, Georgia, issued Bulletin No. PA-1-62, advertising position of General Utility Clerks, same to be effective as of May 15, 1962, at salary of \$470.00 per month. Employees' Exhibit No. 1.

May 19, 1962, the General Chairman having noted objectionable language in the Bulletin (Employees' Exhibit No. 1) immediately set forth the position of the System Committee to Mr. Beach. Employees' Exhibit No. 2.

May 23, 1962, Mr. Beach replied to the Employees' letter of May 19, 1962, and offered conference for discussion of the matter Employees' Exhibit No. 3.

"AWARD

"Claim denied."

Third Division Award No. 5418, Referee Parker:

"* * * Under our decisions (see e.g., Award No. 4011 the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

"AWARD

"Claim denied."

(Emphasis supplied)

Also see other awards, including **Third Division Awards** Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6225, 5941, 2676 and others. Also see **Second Division Awards** Nos. 2928, 2580, 2569, 2545, 2544, 2042, 1996, and others — all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Petitioners have produced no evidence of any violation.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: In this instant claim the Organization alleges the violation of Rule 34 (c) of the Current Agreement, when the Carrier established a new position of General Utility Clerk in the office of the Purchasing Agent of the Carrier at a rate of \$470.00 per month.

The Rule in question provides that when a new position is established, the wages therefor shall be in conformity with the wages for positions of "similar kind or class in the seniority district where created".

The record clearly indicates the new position created was similar in kind to four previously existing General Utility Clerk positions on the seniority district involved, two of which paid \$470.18 per month and two being rated at lesser salaries.

In the circumstances found we must conclude the claim lacks the merit for a sustaining award, and shall be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of July 1965.