

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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-5412) that:

(1) The Carrier violated and continues to violate the Rules of the Clerks' Agreement of December 1, 1956, as amended, when beginning subsequent to May 25, 1959 and continuing thereafter, it required or permitted the assignment to the position of Clerk-Laborer at Columbus, Georgia Stores, duties from two (2) other higher rated positions at this same location, and that therefore,

(2) Clerk-Laborer J. T. Attaway, the occupant of this position subsequent to May 25, 1959, shall now be paid the difference between the original agreed upon salary based upon the duties to be performed — same now being \$428.78 per month and \$458.27 per month (this difference being \$29.49 per month), effective as of August 1, 1962 and continuing thereafter as long as said higher rated duties are required of this position, and that

(3) The successor or successors in interest, if any, that is, any employe(s) who may hereafter stand in like status to Clerk-Laborer J. T. Attaway and who shall have occupied this position and performed the higher rated duties, shall be paid the same difference, and that

(4) The records of the Carrier shall be jointly checked with the General Chairman to determine the amounts due Clerk-Laborer J. T. Attaway and any and all others, if any, who shall have occupied the above referred to position and performed the higher rated duties.

EMPLOYEES' STATEMENT OF FACTS: Early in 1959 it became necessary to establish another position at Columbus, Georgia Stores and, based upon the information supplied by the General Storekeeper, Mr. J. E. Lanier, the General Chairman agreed to establish same at the same rate as that of another position of Clerk-Laborer at Albany, Georgia, then in this same

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 ours.)

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. 2938, 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.

OPINION OF BOARD: The gist of this claim is that Carrier violated the Agreement by transferring duties to the Clerk-Laborer from two higher-rated positions.

The Clerk-Laborer position had been established at a monthly rate of \$395.23 pursuant to a written agreement entered into on March 14, 1959, by representatives of the Organization and Carrier. The position was first bulletined on May 18, 1959 and filled one week later. The bulletin described the work assignment as including unloading, receiving, checking and issuing material, operating trucks and tractors when necessary and assisting the Mechanical Clerk and Storehouse Clerk. No objection was raised to the job description or wage rate mentioned in the bulletin of May 18, 1959, until July 23, 1962, when the present claim was initiated, although Petitioner's submission indicates (at page 3 thereof) that Claimant was required to perform duties of the higher rated positions "shortly after" he was assigned to the Clerk-Laborer position on May 25, 1959.

While both parties have emphasized a number of well accepted principles in support of their respective contentions, the critical issue is whether or not Claimant, the Clerk-Laborer, is being required to perform duties of the higher rated Store Clerk and Stenographer Clerk positions that are not part of his regularly assigned work. It is our opinion that the evidence is not sufficiently persuasive to support a finding in favor of the Claimant with respect to that question.

Ever since the Claimant's position was established, it was contemplated that its incumbents, as part of their normal responsibilities, would assist the Store Clerk and Stenographer Clerk. This is quite apparent from the bulletin of May 18, 1959, Petitioner's failure to object to its job description and the fact that the Clerk-Laborer's wage rate is higher than that of a Laborer. Notably absent from the record is any showing as to what proportion of Claimant's work day is devoted to the performance of higher rated duties that are not part of his assigned responsibilities.

In view of these considerations and the entire record, this Board is not in a position to conclude that the Clerk-Laborer position is substantially similar in work content and responsibility to higher rated positions or that Claimant has been called upon to do more, in addition to his labor duties, than assist the Store Clerk and Mechanical Department Stenographer Clerk.

A contrary finding is not warranted since the Board is not free or disposed to supply the missing essential facts by conjecture or assumption.

In the light of the foregoing discussion, this claim will 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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.