

Award No. 15551
Docket No. CL-15893

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5851) that:

1. The Carrier violated and continues to violate the terms and provisions of the currently effective agreement of May 1, 1942, as amended, when effective after the tour of duties on Tuesday, November 24, 1964, it abolished the position of Cashier-Clerk, rate of pay \$20.82 per day at Milledgeville, Georgia, and on the following day, effective November 25, 1964, established a "new" position with substantially the same duties and responsibilities at the rate of \$415.04 per month, and,

2. Clerk R. E. Carswell, who was assigned to this latter position, shall be paid the difference between the rate of \$20.82 per day and \$415.04 per month retroactive to date of assignment of this position on or about Wednesday, November 25, 1964, and continue thereafter until the proper rate of \$20.82 per day (subject to any salary or wage adjustment appropriate thereto), is re-established; and,

3. The successor or successors, if any, of the above named employee shall be compensated in like manner.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to November 16, 1964 Carrier maintained a position of Cashier-Clerk at Milledgeville, Georgia at rate of \$20.82 per day, the duties of this position were as follows:

Load and unload LCL.

Make inspection of all damaged freight.

Make damage and inspection reports.

Daily yard check.

Handling all monies and make reports connected thereto,
including trip to bank daily for deposits.

When Mr. Reynolds passed away, it was recognized by the Carrier that a clerk succeeding him would not have the same recognition at Milledgeville as Mr. Reynolds had and could not perform certain duties assigned to Mr. Reynolds. Carrier thereupon abolished the assignment held by Mr. Reynolds and transferred most of the duties thereon to the Agent, and established a clerk's position with the following duties:

- Load and unload LCL freight.
- Damage and inspection reports.
- Checking yard.
- Other duties as assigned by agent.

The rate determined on was the going rate for agency clerks on line of road. The organization filed claim, which is before you, and it was declined at all levels on the property.

OPINION OF BOARD: For many years, Mr. R. H. Reynolds occupied the position of Cashier-Clerk at Milledgeville, Georgia at the daily rate of \$20.82. After his death, Carrier, on November 25, 1964, bulletined a position of Cashier-Clerk at the monthly rate of \$415.04 at the same location.

R. E. Carswell, who was the successful bidder on this position, contends that he was assigned to the same position which Mr. Reynolds held. He maintains that Carrier changed the rate of pay of the Cashier-Clerk position to the lower monthly rate without consultation and agreement in violation of Rules 6 (f) and 40 (d) and (h) of the Clerks' Agreement.

Carrier states that Mr. Reynolds was an outstanding resident of Milledgeville, Georgia, and because of his position of prestige in the community, he performed more duties than the usual Cashier-Clerk and therefore he received a higher rate of pay. After his death, recognizing that many of the services he performed stemmed from his status as an outstanding citizen of Milledgeville, it abolished his position and created a new position without the special duties and responsibilities. Inasmuch as the position it bulletined was not the same position that Mr. Reynolds held, it argues that the monthly rate of pay was proper.

The need for a Cashier-Clerk at Milledgeville, Georgia remained after the death of Mr. Reynolds. With his passing, a vacancy was created rather than a new position. Rule 6 (f) of the Clerks' Agreement provides:

"(f) Except when actual conditions necessitate change in positions, the vacancy will be bulletined just as it was being filled prior to the vacancy, both as to work period and duties."

Since there is no evidence of conditions that necessitated change in position, in accordance with this Rule, Carrier had a responsibility to bulletin the same position with the same work period and duties.

In changing the rate of pay from the daily rate to the monthly rate, Carrier violated Rule 40 (h) which states:

"(h) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of

work for the purpose of reducing the pay or rendering these rules inapplicable."

Moreover, since the basic rate for the vacancy was the daily rate, that should have remained in effect unless a new rate was agreed upon by the parties in accordance with Rule 40 (d) which reads as follows:

"(d) Basic rates of pay now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement or as provided herein."

Our position is in accord with Awards 13917 and 14990 in which the Board held that change of rates from one position to another of the same class is not permitted except by agreement.

For the foregoing reason, we hold that the Agreement was violated and Claimant Carswell is entitled to be paid the difference between the rate of \$20.82 per day and the \$415.04 rate per month he received from the date of his assignment until the parties negotiate and agree upon a new rate.

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 violated

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.