



Award No. 15759

Docket No. CL-16027

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, 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-5840) that:

(1) The Carrier violated and continues to violate the rules of the Clerks' Agreement when, effective with the close of business on Friday, May 15, 1964, it arbitrarily and unilaterally, without conference or agreement, abolished the position of Clerk at Sargent, Georgia, assigned hours of service 9:30 A.M. to 6:30 P.M., one (1) hour for lunch, Monday through Friday, Saturdays and Sundays as rest days, salary \$415.11 per month, and assigned all of the work attached thereto which had theretofore been performed solely and exclusively to Clerks' performance — to the Agent-Operator and Mrs. Catherine Johnson, a newly hired person not possessing prior seniority or other rights under the Clerks' Agreement and, at intervals occurring with substantial regularity, to Freight Handler M. C. Sherman and to Carey Smith, persons not possessing prior seniority or other rights under the Clerks' or the Miscellaneous Employees Agreement of June 30, 1960, all of which persons are not covered by the Clerks' Agreement; and,

(2) Clerk J. E. Camp shall now be compensated for the difference between any compensation received by him on the position at Sargent, Georgia and any earned as salary or compensation, if any, in the employ of the Carrier since May 25, 1964; and,

(3) The successor or successors in interest, if any, of the above named employee, shall be compensated in like manner; and,

(4) This claim shall remain in effect until all of the work of the Clerk's position at Sargent, Georgia, is restored to the sole and exclusive performance of employees covered by the Clerks' Agreement of December 1, 1956; and,

(5) The records of the Carrier shall be checked jointly by the Carrier's representatives and the General Chairman of the Brother-

hood or his designated representative to determine the full extent of all losses and/or compensation due the above named employee and/or his successors.

EMPLOYEES' STATEMENT OF FACTS: Effective with the close of business on Friday, May 15, 1964, the Carrier, without conference and agreement, arbitrarily and unilaterally abolished the position of Clerk, Sargent, Georgia and transferred all of the work attached thereto to J. E. Hight, an employee not covered by the Clerks' Agreement and to Mrs. Catherine Johnson, also an employee not covered by the Clerks' Agreement and who had been hired by the Agent, Mr. J. E. Hight, ostensibly for the purpose of "assisting" him in the handling of some of the phases of carrying on the work assigned to Mr. Hight in connection with business handled at this station by the Railway Express Agency and which business, according to our information netted Mr. Hight in the neighborhood of \$400.00 per month and which \$400.00 per month had, before Mrs. Catherine Johnson had been employed by Mr. Hight, been divided equally between Mr. Hight and Claimant J. E. Camp for the reason that Mr. Hight did most of the clerical work in connection with the handling of the Railway Express Agency work, and Claimant J. E. Camp did most of the work in connection with the trucking, receiving and delivery of same, i.e. Clerk Camp did most of the physical work in connection therewith. This arrangement had apparently been satisfactory to all concerned for a long period of time dating back as far as the knowledge of the writer is informed, to 1940 and before.

Clerk J. E. Camp's assignment, at the time of the abolishment of his position with the close of business on Friday, May 15, 1964, was as follows:

Salary, \$415.11 per month.

Hours of service, 9:30 A. M. to 6:30 P. M., one (1) hour for lunch.

Work days, Monday through Friday.

Rest Days, Saturdays and Sundays.

Duties:

1. Billing freight, averaging two (2) hours per day.
2. Expensing Inbound Freight Bills, various time element involved here.
3. Making Yard Checks at Sargent and on spur track at Arnco Mill located approximately one (1) mile from the Station at Sargent, Georgia.
4. Picking up bills of lading from Mill Office at Sargent, Georgia and Arnco Mills, cleaning box cars for loading, keeping office and station grounds clean and in good condition.
5. Answering telephone, quoting rates on freight to customers, rating, routing and extending inbound and outbound billing and performing any and all other clerical work as assigned him by the Agent at Sargent, Georgia.
6. Keep Demurrage Records.

suffered no loss in pay and there is nothing to be paid under Rule 25, Time Limits. Of course Mr. Bishop denied your baseless claim. Vice President Waters furnished you full and complete information, reiterating the facts previously written you by Superintendent Bishop.

For the same reasons written you November 17, 1964 by Superintendent Bishop, and January 20, 1965 by Vice President Waters, the claim presented remains declined in its entirety."

A conference date was mutually arranged by the Director of Personnel and General Chairman for June 11, 1965. On June 22, 1965, the Director of Personnel wrote the General Chairman as follows:

"Referring further to claim for and in behalf of Clerk J. E. Camp as filed in your letter of July 23, 1964 with Trainmaster H. C. Windham, Cedartown, Georgia, growing out of Clerk Camp's job being abolished on May 15, 1964, when the remaining work was turned over to the Agent-Operator at Sargent, Georgia.

This will confirm discussion of this claim in conference held with you by my representative, Mr. J. L. Ferrell, Assistant Director of Labor Relations, on June 11, 1965, and will reaffirm my full and final decision of March 31, 1965, declining this baseless claim."

The next communication of record is the letter written by Mr. C. L. Dennis of the Brotherhood on October 26, 1965, to Mr. S. H. Schulty, Executive Secretary of the Third Division, hereinbefore described.

EFFECTIVE RULES AGREEMENT

The rules and working conditions agreement between the parties is effective December 1, 1956, as amended. Copies are on file with the National Railroad Adjustment Board and, by reference, made part and parcel of this submission.

The Brotherhood has failed in all handlings on the property to cite any violation whatsoever of the agreement except that the Trainmaster did not deny this baseless claim, the claim being denied by Superintendent Bishop on November 17, 1964. The General Chairman has made numerous self-serving baseless assertions, but produced no reasonable proof in support of his baseless assertions and argument. In the conference on the property on June 11, 1965, the General Chairman simply re-hashed his erroneous assertions and baseless arguments as to alleged agreement violation. Since no rule, interpretation or practice has been violated, the Carrier has denied this faulty and improper claim in all handlings on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 15, 1964, Claimant occupied the Clerk's position at Sargent, Georgia. On May 7, 1964, Carrier issued a Job Abolishment Notice advising Claimant that his position as Clerk would be terminated effective at end of tour of duty May 15, 1964.

On July 23, 1964 a claim was presented alleging the Agreement was violated because Carrier arbitrarily and unilaterally, without conference or agreement, abolished the position of Clerk at Sargent, Georgia. The claim was not denied by Carrier until November 17, 1964. We must find the Carrier liable because of its late denial. However, liability of Carrier due to its late denial ceased upon receipt of Carrier's denial. (See Award 13780) We will sustain part (2) of the claim for any actual loss of salary from the date the position was abolished until the denial was made on November 17, 1964. From a review of the record we find that the Claimant was off work seven work days, October 8 through October 18, 1964. We will sustain a claim for seven days pay at the pro-rata rate of the Sargent, Georgia Clerk's position.

Parts (3) and (4) of the claim will be denied. This Board has held many times that the Carrier may, in the interest of economy and efficiency, abolish positions. See Award 12419 (Coburn). Neither does this Board have the power to restore the work of the abolished position. See Award 13125 (Dorsey).

Part (5) of the claim will be denied. There is no rule in the Agreement which requires the Carrier to search its records to establish the Employee's claim. See Award 12739 (Coburn).

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

That the Agreement was violated as set out in opinion.

AWARD

Part (2) sustained as set out in opinion.

Parts (3), (4) and (5) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.