



Award No. 16552
Docket No. CL-17099

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6274) that:

(1) The Carrier violated the Agreement when it bulletined job at Old Hickory, Tennessee and Yard Office, Nashville, Tennessee, on December 30, 1965, as Relief Clerk Number 2.

(2) That the Carrier now be required to compensate Claimant Mrs. Nellie Elmore for the difference in rates of pay, and Travel Expenses incurred by going between Old Hickory, Tennessee and Nashville, Tennessee.

EMPLOYEES' STATEMENT OF FACTS: On December 30, 1965 Carrier advertised by Bulletin No. 112 a Relief Clerk Position No. 2 at Old Hickory, Tennessee and Yard Office Nashville, Tennessee without prior conference with the Organization. (Employees' Exhibit No. 1.) On December 31, 1965, the General Chairman wrote the General Superintendent that any assignment made relative to his Bulletin No. 112 would necessitate a claim for the assigned employe and others affected thereby. (Exhibit No. 2.) On January 4, 1966 Carrier assigned Mrs. Nellie Elmore to the job as advertised, by Bulletin No. 2, (Exhibit No. 3). On February 14, 1966 claim was made for Mrs. Nellie Elmore for difference in rates of pay, Travel Pay and Holiday Pay (Exhibit No. 4). On March 21, 1966 the General Superintendent declined the claim without conference (Exhibit No. 5). The General Chairman again wrote the General Superintendent with explanations of some of our rules and again requested conference (Exhibit No. 6). On April 15, 1966 the General Superintendent confirmed conference of same date, without change in his original position (Exhibit No. 7). He was then notified by the General Chairman that his decision would be appealed (Exhibit No. 8). On April 26, 1966 the claim was appealed to Mr. R. E. Carrier, Director of Personnel, with conference requested. (Exhibit No. 9.)

On June 6, 1966 the Position of Clerk in the Old Hickory, Tennessee Agency was advertised by the General Superintendent's Bulletin No. 62. (Exhibit No. 10). And on June 7, 1966 the purported Relief Clerk No. 2 Position was abolished by Bulletin No. 63. (Exhibit No. 11.) On June 8, 1966, Mr. R. E. Carrier,

The General Chairman thereupon filed claim which was declined at all the prescribed stages of handling on the property as shown in copies of the correspondence between the parties in connection therewith which are attached hereto marked Carrier's Exhibits Nos. 3 to 12, inclusive.

Form 60 submitted by claimant for month of January 1966 seeking \$30.72 "gasoline allowance" and the General Superintendent's disallowance thereof are appended marked Carrier's Exhibits 13 and 14.

The agreements between the parties are on file with your Board and are made a part hereof by reference.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1963 Carrier abolished the last of several clerks' positions at Old Hickory, Tennessee. It then became a one-man station manned by an Agent not covered by Clerks' Agreement.

By the end of 1965 the work load of the Agent at Old Hickory had become heavy enough to warrant giving him some clerical assistance but not enough, says Carrier, to justify the establishment of a full time, five day per week, position of clerk at that location.

On December 30, 1965, Carrier advertised by Bulletin No. 112 a Relief Clerk Position No. 2 at Old Hickory with tour of duty and rates of pay as follows:

"TOUR OF DUTY

Wednesday - 6:00 A. M. to 3:00 P. M., with one hour meal period,
Agency at Old Hickory

Thursday - 6:00 A. M. to 3:00 P. M., with one hour meal period, Agency
at Old Hickory

Friday - 6:00 A. M. to 3:00 P. M., with one hour meal period, Agency
at Old Hickory

Saturday - 8:00 A. M. to 4:00 P. M., Yard Office, Shops

Sunday - 12:00 Midnight to 8:00 A. M., Yard Office, Shops

Monday - Off Day

Tuesday - Off Day

RATE OF PAY

(Including Increases Effective January 1, 1966)

Wednesday	- \$21.8148 per day
Thursday	- \$21.8148 per day
Friday	- \$21.8148 per day
Saturday	- \$20.1124 per day
Sunday	- \$19.8124 per day"

The General Chairman, on December 31, 1965, wrote to Carrier that the "Bulletin and action taken therein is in violation of our current agreement. On January 4, 1966, Carrier assigned Claimant herein to the position." Then Clerks filed the claim averring:

- "(1) No one to relieve at Old Hickory except the Agent who is covered by Agreement with another craft.
- (2) Consolidated the work of two offices without having conferred to affect such consolidations.
- (3) Reduced the rate of pay of the abolished position.
- (4) Made no provision for travel pay.
- (5) Bulletin was not posted the usual 5 days as required by the Agreement."

There is no evidence in the record to support a finding that the advertised Relief Clerk Position performed the same duties as the clerks' position at Old Hickory abolished in 1963. Therefore the two positions cannot be equated for establishing a rate of pay for the new position.

In the absence of a prohibitory provision in Clerks' Agreement, Carrier was free to establish Relief Clerk Position No. 2 covering relief work on one or more days and other work on other days. See Award Nos. 14953, 13274, 13046, 11088, 7039, 6969, 6301. Our study of the Agreement before us, particularly the provisions cited by Clerks, disclosed no prohibition. Further, there is no rule in the Agreement to support the claim for travel expenses; and, we may not concoct one. See Award Nos. 13828, 13491, 13483, 14202, 14595, 15380, 15533, 15604. We, therefore, will deny the Claim.

In the record Clerks allude to the February 7, 1965 National Agreement. Should there exist a dispute involving the interpretation and application of that Agreement the forum to resolve it is the Disputes Committee established under that Agreement. See Award Nos. 14979, 15696.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.