

Award No. 16840
Docket No. CL-16990

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**

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6233) that:

(1) The Carrier violated and continues to violate the Clerks' Agreement of December 1, 1956, as amended, when it refused and continues to refuse to assign Yard Clerk J. T. Attaway, Sr., to the position of Yard Clerk as covered by Bulletin dated January 11, 1966, effective January 18, 1966, Carrier's File 125-19-B, Columbus, Georgia Yard Office.

(2) Yard Clerk J. T. Attaway, Sr., shall now be assigned to the above referred to position and paid the salary thereof, i.e., \$523.69 per month (subject to any and all salary adjustments, if any) as of Wednesday, January 19, 1966 IN ADDITION TO any and all salaries and/or other compensation which may be paid to him from this latter named date and continuing until he is so properly assigned.

(3) Any and all other clerks in this same seniority district who have been or may hereafter be adversely affected as result of the Carrier's failure to initially properly assign Yard Clerk Attaway, Sr., as hereinbefore protested, shall likewise be compensated for any and all wage or compensational losses sustained by them in like manner and for the duration of the time so adversely affected.

(4) The records of the Carrier at this small combined Agency and Yard Office shall be checked jointly with the General Chairman to determine the full extent of the reparations due all adversely affected employees.

EMPLOYEES' STATEMENT OF FACTS: According to our information, Bulletin of January 11, 1966, hereinafter referred to as Employees' Exhibit No. 1, and copy of which is hereto attached, was duly bid in by Yard Clerk J. T. Attaway, Sr., and he, as the senior, qualified, available employee expressing desire for same, has been awarded the position, but has been held off the

assignment on the untenable grounds that there was no one to work his presently occupied position.

The foregoing correspondence shows that this defective and baseless claim has been declined by each and every Carrier officer on the property. The self-serving assertions, contentions and conclusions made by the Brotherhood's General Chairman have been emphatically denied and rejected. No showing has been made that the agreement was violated, nor that Clerk Attaway is entitled to the exaction, penalty or windfall that the Brotherhood is demanding for him. The claim is without any semblance of merit, and should most certainly be denied in its entirety by your Board.

THE AGREEMENT

The rules and working conditions agreement is effective December 1, 1956, as amended. The agreement, as amended, is by reference made part and parcel of this submission as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: By bulletin under date of January 11, 1966, Carrier advertised for bids a position of Yard Clerk, Columbus Yard, Columbus, Georgia, with rate of pay \$523.69 per month. Claimant herein, holding at the time a position of Relief Crew Dispatcher with rate of pay of \$529.25 per month, placed his bid. On January 21, 1966, Carrier responded to Claimant's bid:

"You are successful bidder and will be assigned just as soon as the new men we have employed are qualified. When one of these new men has qualified we will bulletin your vacancy."

Under date of February 22, 1966, Clerks filed claim that Carrier was in violation of the Agreement because of its failure to place Claimant on the Yard Clerk position on and after January 22, 1966.

On March 1, 1966, Carrier, by bulletin, abolished the Yard Clerk position to which Claimant had not been assigned and advertised for bids a position of Relief Yard Clerk with rate of pay of \$529.25 per month. Claimant bid on and was assigned to the position.

In its denial of the Claim Carrier stated:

"Due to shortage of personnel, it was imperative that we continue Mr. Attaway on the crew dispatching position he held prior to being awarded the yard clerk position on January 21, 1966. It was our intention to let him go on the yard clerk position as soon as a replacement could be found, however, since we were not able to get a replacement the yard clerk position bid in by Mr. Attaway was abolished on March 1, 1966 by proper bulletin.

For your further information a position of Relief Yard Clerk advertised in bulletin dated March 1, 1966, by Superintendent H. L. Bishop, Jr., which bulletin closed at 11:50 A.M., E. S. T., March 8, 1966, was bid in by Mr. Attaway. He, in fact, occupied that position on a temporary basis, and was assigned to it on March 8, 1966 after the bulletin came down.

During the period that Mr. Attaway was required to work his old job which required crew dispatching, he was paid in strict accord with Rule 34 (d) at the higher rate of pay, which contemplates exactly

what we did. Mr. Attaway has suffered no monetary loss whatever. As a matter of fact, the situation here was no different than it has been from time to time through the years, and the clerk was paid in strict keeping with Rule 34 (d) in each case.

There is no penalty rule in the Clerks' Agreement, as you know.

Since neither the effective rules agreement, interpretations nor practice support your baseless claim, the claim is respectfully declined in its entirety."

Rule 34 (d) — Rates of Pay — of the Agreement reads:

"(d) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. (Emphasis ours.)

Management's prerogatives to blank a position — as it did the Yard Clerk position in the period from January 22 to March 1, 1966 — and to temporarily assign the owner of the position to another position are unimpaired unless prohibited by Agreement Rules.

The Agreement contains no provision prohibiting Carrier from blanking a position.

Rule 34 (d) recognizes the right of Carrier to temporarily assign an employe to a position other than his own; provided, the employe is paid at the rates prescribed in the Rule.

Clerks failed to prove a violation of the Agreement by Carrier. We will deny the Claim.

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 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 19th day of December 1968.

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