



Award Number 17833

Docket Number CL-18366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6652) that:

- (1) The Carrier violated rules of the Clerks' Agreement when on May 2, 1968 it assigned Clerk J. L. Morgan to position in Transportation Department but did not release him from position and when they allowed and/or required an employee not covered by the Agreement to perform the duties of the position assigned Clerk J. L. Morgan.
- (2) Clerk J. L. Morgan be paid eight (8) hours at the punitive rate of the position for May 8, 1968, and the same for each and every work day subsequent thereto until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. L. Morgan, herein-after referred to as Claimant, holds clerical seniority on District 14, in which both the General Manager, Transportation and the Mail Room are located; this seniority district being in the General Office, Jacksonville, Florida.

On April 25, 1968, the Carrier posted a Clerks' Bulletin, Advertisement No. 2, vacancy of J. R. Young, position of Clerk (TOFC). The assigned work days, Tuesday through Saturday, with Sunday and Monday rest days. The location of this position is the General Manager-Transportation Office. (Employees' Exhibit "A") Then, a Clerks' Bulletin was posted assigning this vacancy No. 2 to Claimant, the assignment showed no date. (Employees' Exhibit "B"). On May 2, 1968, the Carrier posted a Clerks' Bulletin, Advertisement No. 3, vacancy of J. L. Morgan, the Claimant, position of Mail Clerk. The assigned work days, Monday through Friday, with Saturday and Sunday rest days. The location of this position is the Mail Room. (Employees' Exhibit "C"). Then a Clerks' Bulletin was posted, without date, assigning vacancy No. 3. (Employees' Exhibit "D").

On July 8, 1968, District Chairman L. E. Boshier filed claim with General Manager-Transportation, Mr. L. T. Andrews, at Jacksonville, Florida, contending a violation of Rules of the Agreement. And, in support of the District Chairman's position that the Claimant was assigned the Clerk (TOFC) position and was held on the Mail Clerk position and, also, that an employee not covered by the Agreement was allowed and/or required to perform

ment pending the transfer of Mr. Morgan. Due to inexperience in this work, she was assisted by a non-contract employee who was fully familiar therewith. The same was true when Clerk Morgan, who was thoroughly unfamiliar with the work, reported for the assignment. He needed and was given assistance by both contract and non-contract employees.

For the reasons expressed in conference and confirmed herein, the claim is wholly without merit and it is declined."

Assistant Vice President C. E. Mervine, Jr., to General Chairman Davenport dated April 9, 1969.

"This confirms conference which Mr. Sale held with you on April 8, 1969, concerning your case listing No. 68-34 in claim on behalf of J. L. Morgan, Jacksonville, Florida.

The statement made by Clerk John R. Young dated February 20, 1969, copy of which was furnished this office in conference yesterday, does not in any way refute the facts as outlined in Mr. Duffer's decision of declination dated November 22, 1968. Therefore, since nothing new was presented in this conference to warrant change in Mr. Duffer's referred-to decision of declination, such decision is hereby reaffirmed."

The statement of Clerk Young referred to above is quoted below:

"The information herewith as requested:

I formerly held a TOFC (Clerk) position (contract) in the Transportation Department. Upon being awarded my present job in the Purchasing Department my former position was filled temporarily by Mr. K. W. Barron, Sr., a non-contract employee, until the placement of other contract personnel.

On or about the first week of June I learned that Mr. J. L. Morgan had been awarded my former position. However, upon visiting the office numerous times I noticed that Mr. Barron was still occupying the position, and did so up until approximately the second week of July.

I did take notice also that during these approximately two months Mr. Bob Mundy vacated his position and it was (within a legitimate period) immediately filled by Mrs. J. Bullock (contract employee). Mr. Morgan, as I understood it, was still being held at his former position during this two months period.

Statement of facts concerned:"

By agreement the parties, the time limit imposed by Rule 37 on this case was waived.

OPINION OF BOARD: The claim before the Board arises out of the filling of a clerical position, designated as TOFC clerk, in the office of General Manager-Transportation. The position was bulletined on April 25, 1968, in accordance with Rule 11. J. L. Morgan, the Claimant herein, was the successful bidder on the position bulletined and was assigned thereto. Claimant's prior assignment was in the mail room. The Carrier states that because there was no available employee to replace Morgan in the mail room, he was held on his old assignment until July 9, 1968, at which time a replacement became available and he was released and assumed the position of TOFC clerk. The

rate of pay of Claimant's position in the mail room was \$23.60 per day, while the rate of pay of the TOFC position was \$24.11 per day. The Carrier advises that in order to preclude Claimant from sustaining a loss in earnings while being held on the lower rated position, he was allowed the rate of the TOFC position beginning May 6, 1968, the date he was assigned to the position.

While there is some discussion in the record concerning Rule 11, it appears that the parties reached an understanding as to the application of that rule. At any rate, the District Chairman stated in his handling with the General Manager-Transportation:

"* * * the basis for the claim as I filed it is the non-contract employee performed clerical duties, * * *."

The Carrier, from the beginning, denied that the work on the TOFC position, from May 8, 1968, to July 9, 1968, was performed by a non-contract employee, but contends that a Miss Waycaster, an employee fully covered by the Agreement, and with the title of General Clerk, was temporarily placed on the assignment pending the transfer of claimant Morgan, but as she was inexperienced in the work of the TOFC position, a non-contract employee did assist her in the duties, and the same was true with claimant Morgan when he was actually placed on the TOFC position as he was unfamiliar with the work of the position and was assisted by both contract and non-contract employees. The Carrier contends that its actions in using a non-contract employee to assist Miss Waycaster, and also to assist Mr. Morgan when he was placed on the assignment was in accordance with Rule 12(d) reading--

"(d) Employees will be given full cooperation of department heads and others in their efforts to qualify."

It is a well established principle of the Board that the burden is upon claimants to prove all essential elements of their claim, and that mere assertions are not proof. (Awards 16881, 16813, 16780, 16499, 16258, among others.) With this principle in mind, we must look to the record to determine whether the Petitioner has submitted probative evidence in support of its claim. In the handling on the property the Petitioner presented a letter dated February 20, 1969, addressed to the District Chairman by John R. Young. This letter was dated some six months after the Claimant had been placed on the position, and in the opinion of the Board, falls far short of refuting the positive statements of the General Manager-Transportation and the Director of Personnel of the Carrier that contract covered employee Miss Waycaster, with title of General Clerk, was temporarily placed on the assignment pending the transfer of claimant Morgan. With its submission the Petitioner has also included a letter dated February 18, 1969, addressed to the District Chairman by the Claimant. There is no showing that the latter letter was presented in the handling of the dispute on the property, but even if it had been, it is only a self-serving document, and falls short of meeting the burden-of-proof requirement.

Based upon the entire record, we find that the Petitioner has not met its burden of proving by probative evidence that from May 8, 1968, to July 9, 1968, when Claimant was placed on the TORC position, that the work of that position was performed by non-contract employees, and for this reason the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: