



**Award Number 17955**

**Docket Number CL-18365**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur W. Devine, Referee**

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**PARTIES TO DISPUTE:**

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

**SEABOARD COAST LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6632) that:

- (1) The Carrier violated rules of the Clerks' Agreement and Memorandum Agreement of December 7, 1967 when on February 14, 1968 it moved an excepted employe into the Mechanical Department, General Office, Jacksonville, Florida, and allowed and/or required her to perform work that had previously been assigned and performed by clerks covered by the Agreement.
- (2) Clerk, Mrs. Sandra Brooks, be paid a day's pay for February 14, 1968 and the same for each and every subsequent work day that a non-contract employe is allowed and/or required to perform the work previously performed by contract employe at the punitive rate of the position held by her.

**EMPLOYEES' STATEMENT OF FACTS:** Mrs. Sandra Brooks, hereinafter referred to as Claimant, holds clerical seniority on District 15 which includes the Mechanical, Signal, Engineering Departments and Central Transcription Bureau. This seniority district is located in the General Office at Jacksonville, Florida.

On September 11, 1967, the Carrier wrote the General Chairmen, advising their intent to transfer seven positions under the provisions of the Agreement for Protection of Employees in Event of Merger, effective August 1, 1966. (Employees' Exhibit "A").

On December 7, 1967, an Agreement was reached to transfer the work of the four contract positions and set forth the rights of the occupants of such positions. (Employees' Exhibit "B").

On March 8, 1968, District Chairman L. E. Bosher filed claim with Assistant Vice President-Equipment, Mr. J. W. Hawthorne, at Jacksonville, Florida contending a violation of Rules of the Agreement and of the Memorandum Agreement signed on December 7, 1968 and which is attached hereto as Employees' Exhibit "B". And, in support of the District Chairman's position that a non-contract employe had been moved into the Mechanical Department and was performing the work that contract employes did perform and work which was supposedly transferred to the Central Transcrip-

contract employee was assigned to perform the duties that had been assigned to Mrs. Brooks' position.

I will thank you to instruct that Clerk Brooks be paid eight (8) hours at the punitive rate of her position for February 14, 1968, and the same for each and every date subsequent thereto and continuing until the violation is corrected."

**Director of Personnel S. M. Duffer to General Chairman J. L. Davenport, Jr., dated September 24, 1968.**

"This refers to your letter of July 26, 1968, File T-1, listing for conference discussion beginning August 6, 1968, claims identified as Item Nos. 67-4, 67-17, 67-19, 67-22, 67-23, 67-24, 67-27, 68-2, 68-3, 68-5, 68-6, 68-9, 68-10, 68-11, 68-15, 68-22, 68-23, 68-24, 68-25, 68-26, and our several conversations, the last being Friday, September 20, 1968, concerning postponing discussions of these claims.

Our decision of these claims has been postponed on several occasions because of the handling of more important matters. In our conversation last Friday, it was understood that we would commence discussion of these claims as well as others subsequently appealed to this office beginning October 22, 1968. It was also understood that you would submit a listing of any claims and any matters not heretofore listed. We have not rendered decision on certain of the items listed above. Therefore, it was further understood that the time limit imposed by Rule 37 of the current agreement is waived on those items on which decisions have not been rendered as well as those items on which decisions have been rendered."

**Director of Personnel S. M. Duffer to General Chairman J. L. Davenport, Jr., dated November 6, 1968.**

"This refers to your file G-2, Brooks, S., C-2, No. 2, concerning claim on behalf of Clerk Sandra Brooks, Jacksonville, Fla., for eight hours at the punitive rate of steno-clerk in the Mechanical Department, for each date beginning February 14, 1968, and same for each subsequent account being transferred to Central Transcription Bureau on January 22, 1968, and a non-contract employee on February 14, 1968, being moved into the Mechanical Department and assigned to perform the same work she performed before being transferred, which claim was discussed in conference on October 24, 1968.

By agreement between the parties, the time limit imposed by Rule 37 on this case has been temporarily waived. In his letter of declination to District Chairman Bosher, dated March 12, 1968, Assistant Vice President Hawthorne fully set forth the facts and circumstances involved herein and gave specific and supported reasons for his decision of declination, with which I wholly agree.

As stated to you in conference, nothing new has been presented to warrant a change of Mr. Hawthorne's decision. The claim, therefore, is without merit and is further declined."

As will be noted by Carrier's letter of September 24, 1968, by agreement between the parties, the time limit imposed by Rule 37 on this case (68-11) was waived.

**OPINION OF BOARD:** In connection with the transfer of certain former Seaboard stenographic positions from their respective departments to the

Central Transcription Bureau, the following Agreement was executed by the authorized representatives of the Carrier and of the Organization on December 7, 1967.

"Pursuant to notice served on September 11, 1967, in accordance with Appendix 'F' of the Agreement dated November 3, 1966, with respect to the transfer of four (4) contract and three (3) excepted stenographic positions to Central Transcription Bureau from Purchasing and Stores, Mechanical, Engineering and Maintenance of Way and Communications and Signals Departments,

**IT IS AGREED THAT:**

1. The three (3) excepted positions transferred to the Bureau on September 13, 1967, in accordance with verbal understanding, shall be governed by the provisions of Sections 3 (b), (c), (d), 4 (a) and (b) of Memorandum Agreement dated October 14, 1966, establishing the Bureau.

2. On a date to be later designated by the Company, as to which the employees involved will be given not less than five (5) days' advance notice, the work on the four (4) contract positions (two in Mechanical Department and two in Purchasing and Stores Department) will be transferred to the Bureau. The occupants of such positions shall have first option of following their work and positions or of exercising seniority in accordance with the provisions of the applicable working agreement. Employees transferring to the Bureau with their work and positions shall be transferred with the applicable rate of pay of the position occupied.

3. Employees who transfer with their work and positions shall retain and continue to accumulate seniority in the group and district from which transferred and shall establish the same seniority date in the Bureau.

Signed at Jacksonville, Florida, this 7th day of December, 1967."

On January 2, 1968, the Assistant Vice President-Equipment notified Mrs. Sandra Brooks, the Claimant herein, that her position was being transferred from the Mechanical Department to the Central Transcription Bureau. The Claimant transferred to the Central Transcription Bureau on January 22, 1968.

On March 8, 1968, the District Chairman filed claim with the Assistant Vice President-Equipment, alleging that the duties of Mrs. Brooks' position had not been transferred to the Central Transcription Bureau, but instead remained in the Mechanical Department and were being performed by a Mrs. Jane Dykes, a non-contract employee. The Assistant Vice President-Equipment denied the claim on the ground that the work formerly performed by Mrs. Brooks had been transferred to the Central Transcription Bureau, and was not being performed by Mrs. Dykes. The claim was appealed to the Director of Personnel, who concurred in the decision of the Assistant Vice President-Equipment and denied the claim.

With its submission to this Board the Petitioner has included a letter dated March 18, 1968, addressed to the District Chairman by Claimant Brooks and also a letter of March 19, 1968, addressed to the District Chairman by Joan H. Barnes to support its contention that a non-contract employee was performing the work in the Mechanical Department formerly per-

formed by Claimant Brooks. The Carrier objects to consideration of the two letters mentioned, contending that they were never presented or made known to the Carrier in the handling of the dispute on the property, and that the introduction at the Board level is in violation of Circular No. 1 of the National Railroad Adjustment Board which specifies that "all data submitted in support of employees' position must affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute." In view of the contention of the Carrier, we have examined the record of the handling of the dispute on the property for any evidence that the two letters had been submitted to the Carrier and have found none. It is well settled that the Board will not consider evidence or issues not brought forward on the property, and we must, therefore, exclude them from our consideration.

This leaves the record properly before us of assertions by the Petitioner and denials by the Carrier. We have many times held that the burden is on the Petitioner to establish its claim by probative evidence. This the Petitioner has failed to do and the claim will be denied.

**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 not violated.

#### A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1970.