

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY
(M. F. Callaway, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The Carrier violated and has continued to violate the Clerks' Agreement when it refused and continues to refuse to compensate the position of Stenographer to Chief Dispatcher, Macon, Ga., at \$169.60 per month (204 hours service per month), and that therefore,

(2) Mrs. E. F. Jenkins, the present incumbent of the position and such other future incumbents of the position, if any, shall now be compensated for the difference between the salary now paid on the position, or \$137.60 per month, and \$169.60 per month, or \$32.00 per month, representing the difference between the salary received and the proper salary, for the duration of their occupancy of the position, retroactive to the time of its establishment, and that,

(3) This claim shall remain in effect until satisfactory adjustment is made.

EMPLOYEES' STATEMENT OF FACTS: On or about February 1, 1943, there was established a position of Stenographer to Chief Dispatcher at Macon, Ga., in the seniority district of the Superintendent's Office of the Macon Division, at salary of \$137.60 (204 hours per month), and this position had and now has the following duties:

Lines up equipment and arranges movements of trains.

Lines up cars to be placed on orders for next day's loads.

Answers telephone inquiries regarding trains, schedules, equipment, crews, etc.

Makes Western Union telegraphic report of each main (military train) separately to War Department in Washington, D. C.

Looks up information and answers tracers from the War Department and the Superintendent of Transportation in connection with mains already moved.

Performs any and all other clerical and/or semi-dispatcher duties requested by Chief Train Dispatcher.

Rule 61 was not violated because there was no new position created, but merely one of the two positions, which were discontinued in 1930 on account of the depression and no work, was restored when business increased sufficiently to warrant its reestablishment.

There was no violation of Rule 70 as the higher agreed upon rate was used in reestablishing this position.

The Carrier admits that there may be a greater volume of work on the position now than when it was discontinued. If there had not been, it would not have been restored. Increase in volume of work does not create a new position, nor does it, under the Clerks' Agreement, require adjustment of salary in accordance with any of their rules.

The Carrier further takes the position that once having agreed to the position as bulletined (as evidenced in the General Chairman's letter of March 25, 1943) the Clerks should abide by their agreement.

The Carrier further contends that it has been clearly shown that this case is in fact a request for an increase in rate of pay and not a claim for violation of any rule in the Clerks' Agreement and that the Clerks, if dissatisfied with the Carrier's refusal to increase the rate of pay, should have invoked the services of the National Mediation Board rather than have filed a claim of this nature with the National Railroad Adjustment Board, which has no jurisdiction.

The Board's attention is also called to the statement of the claim as submitted to the Board, in that this does not stipulate what rule or rules were violated; nor have the Clerks ever, in all their handling either by correspondence or conference, advised the Carrier what rules were violated.

There is no merit in this claim and it is not properly before the Board in that it is a request for an increase in pay and not a claim for a violation of the Agreement.

OPINION OF BOARD: During 1930 the Carrier abolished two positions at Macon, Georgia, namely, that of Clerk-Stenographer to the Chief Dispatcher of the Macon Division, rated at \$105 per month, and that of Clerk-Stenographer to the Chief Dispatcher of the Southwest Division, paying \$107 per month. The latter position was occupied by the claimant herein at the time it was discontinued.

As of November 28, 1942, the Carrier bulletined the position of Stenographer to the Chief Dispatcher at Macon, with a rate of \$137.60 per month, and assigned the same to the claimant. The Carrier says that this was merely the restoration of the former position on the Southwest Division, rated at \$107 per month, with the subsequent wage increases authorized by the mediation agreements of August, 1937, and December, 1941.

Among the facts that constrain us to reject the proposition advanced by the Carrier are the following: That twelve years had intervened between the discontinuance of the \$107 per month position and the establishment of the \$137.60 per month position; that, in the meanwhile, the operating divisions involved had been reorganized and merged; that the \$107 position had been abolished by reason of a decline in business incident to a period of economic depression; and that the \$137.60 position was established to meet abnormal war-time demands. See Award 2215.

Rule 61 provides the formula, but not the procedure, for establishing the wages for new positions. Neither is that the function of this Board. The responsibility of fixing an appropriate rate of pay rests, in the first instance, upon the carrier; but its action in that regard may be protested by the Organization or the employe concerned and may ultimately be reviewed by this Board for an abuse of discretion, or for failure to comply with the rule.

Apparently, the Carrier misconceived its obligation and arbitrarily fixed the salary of the position in controversy in accordance with that paid on another position, which was abolished twelve years before, rather than "in conformity with the wages for positions of similar kind and class in the seniority department where created," as commanded by Rule 61. It is not too much to expect that, in the light of this opinion, the Carrier will adjust the claimant's compensation in accordance with the spirit of said Rule and make her whole for the period that she has already served. If that does not suffice, the petitioner may make timely protest, and, if necessary, again appeal to this Board. In the meantime, however, there is nothing properly before us for review. In other words, we cannot act until the Carrier has acted in accordance with Rule 61 as of the date position was established.

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 violated the Agreement.

· AWARD

Controversy remanded to the property for further proceedings in accordance with the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.