

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) Clerical position in Corsicana Freight Station, assigned to one Mrs. Cypert March 17, 1943, should have been bulletined as required by Rule 13 in agreement of November 1, 1939.
- (2) Any and all employes affected be compensated for any and all wage losses sustained because of Carrier's failure to bulletin the job at its proper rate as required by the rule.
- (3) Mrs. Cypert be paid the difference between \$105.00 per month as paid and payment at \$5.99 per day, the schedule rate of the position (February 1, 1943) to which she was assigned from March 17 to April 17, 1943.

EMPLOYEES' STATEMENT OF FACTS: One Mrs. Cypert, whose further identity is not known to us, was employed by the Carrier under title of "student clerk" in the Corsicana Freight Station from March 17 to April 17, 1943. Some of the elements of the position to which she was regularly assigned were, a regular place of employment, regular hours of assignment, regular and ordinary supervision, duties of a given character or nature, and a fixed rate of pay. Her duties were exclusively clerical in character and nature, here duties being specifically to assist, and participate with, other clerks of the station in the performance of the clerical work of the Corsicana Station. Her duties were "relatively the same class of work" as that of a former Utility Clerk job in the Corsicana Station, theretofore discontinued, the schedule rate for which was \$5.99 per day during her assignment. She was expected and required to earn the wages paid her by the performance of station clerical work. Her hours of service and compensation were reported to the Interstate Commerce Commission as being the hours of service and compensation of a clerk in the employ of this Railroad. Her assigned hours, supervision, other conditions of employment generally, and the class or kind of work performed, corresponded with those of other clerical employes of the Station.

The re-establishment of the former Utility Clerk position, to which Mrs. Cypert was assigned, was made necessary by the inability of the station force, as then constituted, to perform the clerical work of the Station, except at what was deemed to be prohibitive overtime costs. The re-established Utility Clerk position was not bulletined as required by Rule 13 of the current Agreement. Instead, the Carrier, through the sheer exercise of administrative authority, arbitrarily assigned Mrs. Cypert to the position, without regard to the seniority rights and wishes of other employes in the seniority district.

The record of the Carrier shows that Mrs. Cypert was not assigned to any clerical position at Corsicana freight station March 17, 1943, to April 17, 1943; that there was not a new position or vacancy known to be of 30 days or more duration at Corsicana freight station during that period that should have been bulletined, and that Mrs. Cypert did not fill any position that carried a rate of \$5.99 per day, nor was there any such position in effect at Corsicana freight station from March 17 to April 17, 1943. Accordingly, the case should be dismissed, or claim in all things denied.

CONCLUSION: The Carrier has fully demonstrated that there has been no violation of agreement and that no claims have been made by Mrs. Cypert or by other employees, showing any wage loss, and as none were made and handled in the usual manner, no such claims are properly referable to the Adjustment Board. It has been shown that the complaints of the Division Chairman and General Chairman were unwarranted and that the reasons used as a basis for their complaint have long since disappeared.

OPINION OF BOARD: Upon the record presented in this case, the Board finds that the position in question was not bulletined and rated in accordance with the provisions of the Agreement and that Item (1) of the claim should be sustained. Under all the facts and circumstances of this case, Items (2) and (3) will be denied.

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 Item (1) will be sustained and that Items (2) and (3) will be denied.

AWARD

Item (1) sustained; Items (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1945.