

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

GEORGIA AND FLORIDA RAILROAD

ALFRED W. JONES, RECEIVER

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 the rules of the Clerks' Agreement, as hereinafter stipulated, when it abolished the position of Car Clerk, then occupied by Mrs. Harold T. Blount, Jr., at Vidalia, Georgia, Salary \$.9975 per hour effective May 1, 1954 and assigned the duties of the position to the Supervisory Agent Mr. E. M. Burgamy, an employe not covered by any agreement and also assigned a portion thereof to Mr. Lamar C. Powell, an employe covered by the Clerks' Agreement but compensated at the lower rate of \$.9775 per hour, and that, therefore, Car Clerk Mrs. Harold T. Blount, Jr., and/or her successors, if any, should now be compensated at her regular salary from May 1, 1954 and thereafter until the position is reestablished, and that,

(2) Lamar C. Powell should be compensated for the difference between \$.9775 per hour and salary of \$247.04 per month based on 204 hours per month, the difference being that between the salary of Mr. Powell's position and that of Mrs. E. M. Burgamy, Cashier, account part of Mrs. Burgamy's work being assigned to Mr. Powell.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 15, 1953 there was no rules agreement on the Georgia and Florida Railroad covering the clerical and related employes and for many years prior thereto and specifically prior to May 1, 1954 there were the following positions located at Vidalia, Georgia, Agency:

1. Station Agent—Mr. E. M. Burgamy, not covered by any agreement.
2. Cashier—Mrs. E. M. Burgamy, covered by the Clerks' Agreement.

Vidalia, Ga., July 22, 1955.m

Mr. H. N. Molton, S. T.,
Augusta, Georgia.

Dear Sir:

With reference to our conversation concerning the abolishment of Car Clerks position at Vidalia May 1, 1954 and how the duties of that job was assigned.

I would like to say that the duties of the Car Clerk were assigned to clerks in this office when this job was cut off according to the Clerks Agreement. I have never had any specific clerical work assigned to me since I have been Agent here. I am a Supervisory Agent and have always assisted in time of emergency, on the wire, in the warehouse and diversions where trains were involved.

You will recall that this subject was brought up in a conference in Mr. Belvin's office on June 4th 1954 and I stated then that none of the work of car clerk has been assigned to me but has been distributed according to instructions and the Clerks Agreement.

This is a truthful statement of facts in the case and I hope that it will be accepted as such.

Yours very truly,

(Signed) E. M. Burgamy

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of the Organization that when Carrier, on May 1, 1954, abolished the position of Car Clerk at Vidalia, Georgia, it assigned some of the work of that position to E. M. Burgamy, Carrier's Supervisory Agent, an employee, Organization avers, "not covered by any Agreement."

Organization also contends Carrier assigned a portion of the work of the abolished position to Lamar C. Powell, who, while covered by Clerks' Agreement, was working at a lower-rated job and performed the duties assigned from Car Clerk's job at a rate lower than that of Car Clerk.

Carrier's argument is that it established the Car Clerk position November 1, 1951 because of increased business, and abolished it May 1, 1954 because of decreased business "and the remainder of the work was returned to employees who had performed it prior to the establishment of the Car Clerk position in 1951."

It is argued on behalf of Carrier that there is nothing in the Agreement which precludes it from abolishing unneeded positions; that a Carrier may, in the interests of efficiency and economy, abolish positions and rearrange the work thereof.

It is argued on behalf of Organization that Carrier violated these sections of the applicable Agreement:

Rule 14 (a) "When reducing forces, seniority rights shall govern," . . . when Carrier permitted Supervisory Agent, who held no seniority rights under the Clerks' Agreement "to perform any of the work performed by the Car Clerk prior to the reduction in force."

Rule 14 (e) "In reducing forces the lowest rated position in the office * * * will be abolished, providing the efficiency of that office or

department would not be impaired by doing so.' when it did not abolish the Warehouse Clerk instead of the higher rated Car Clerk position. Carrier does not claim * * * that the 'efficiency' would have been 'impaired by doing so.'"

The record is clear that the abolished Car Clerk position came within the Scope and operation of the applicable agreements.

Carrier's defense is that no work of the abolished position was assigned to the Supervisory Agent, and supports this defense with a statement from the Supervisory Agent, himself that "duties of the Car Clerk were assigned to Clerks in this office when this job was cut off * * * and * * * none of the work of the Car Clerk has been assigned to me but has been distributed according to instructions and the Clerks' Agreement."

Organization's evidence consists of (a) quotations from a letter written by the Supervisory Agent a few days before the Car Clerk position was abolished in which he advised his superior that because of the scheduled job abolition, "it will be impossible (for the 2 remaining employees, a cashier-Clerks and operator-Telegraphers) to keep up with the work that the car clerk does now within (their) assigned hours;" (b) letter from displaced Car Clerk, which Carrier observes was written 18 days before her job was abolished, detailing the daily duties of her job, and (c) the visit to the office in question August 16, 1955 by Organization's general chairman and his observation that he "found Supervisory Agent, E. M. Burgamy performing in detail work which had always heretofore been assigned to Car Clerk, Mrs. Harold Bleunt, all hands being fully occupied, with heavy tobacco movements and business admittedly better than it had been for quite some time and Mr. Burgamy doing his best to assist and in fact perform all of the work he possibly could as usual since the abolishment of the position of Car Clerk." Organization asserts the clerical duties performed by Burgamy consumed "at least 4 hours per day."

In retort, Carrier points out that this (C supra) "was during the tobacco marketing season which runs approximately three weeks per year."

Organization makes the point it asked Carrier, while the case was being handled on the property, to agree to a joint check to accurately establish distribution of the duties of the abolished position, but Carrier refused.

We must observe here, as we did in Award 7785, that

"While any Carrier might be reluctant to search its records to make a claim for the proponents of one, nevertheless it would seem that in a situation like this, where the Organization delineates the * * * duties it alleges were assigned to * * * (one) outside the Agreement and in violation thereof—which is the Organization's claim—and Carrier's position is directly opposite—if Carrier were as firmly in the right as the instant Carrier asserts itself to be, it would welcome the opportunity to prove itself innocent as charged through the medium of a joint check of the facts in the dispute."

Instead, we have here two different sets of "facts," a situation not wholly unlike that in Award 7785 (also Award 1256). And we find ourselves with a reasonable doubt by virtue of Carrier's failure to avail itself of the opportunity it had to establish, by joint check, the actual duties involved in this case. It is a doubt we must, therefore, resolve in favor of the Organization.

A final argument is made on behalf of Carrier that it is "a small Carrier and the July 15, 1953 Agreement was the first Agreement ever made with any labor organization covering employees of the clerical class. Inasmuch as there never had been an assignment of duties to any particular

position, it is obvious that at the time the Agreement was adopted there was no rating of positions on the basis of work content as is done on larger Carriers."

But the fact remains that Carrier here involved is a signatory of and party to the applicable Agreement, and is subject to all its terms and conditions.

There is also involved in this docket a claim on behalf of one Lamar C. Powell, an employee under the Clerks' Agreement, lower-rated than Car Clerk to whom, Organization asserts, was assigned "a portion" of the duties of the abolished position, and for whom Organization seeks compensation for the difference between \$.9975 per hour (Car Clerk) and \$.9775 per hour (Powell) "account part of Mrs. Burgamy's work being assigned to Mr. Powell."

The record contains copy of a letter dated June 9, 1955 written by Powell to Organization's general chairman stating Carrier was then permitting him to do freight draying work (formerly handled on his own personal time) "within my assigned hours and I would appreciate it if you would withdraw the claim in my behalf. I am satisfied with my work as it is now."

In view of the circumstances the Powell claim will be denied.

Carrier cites numerous Awards in support of its position, among them:

Determination of the number of employees necessary to its operation is a managerial prerogative. (Award 4446).

Burden of presenting positive and substantive evidence in support of a claim is upon the party seeking its allowance. (Award 7584 et al).

Scope Rule does not describe Agreement coverage in terms of work, but rather, lists classes of employees for whom the Agreement governs hours of service and working conditions. (Awards 7424, et al).

There are few, if any, employees of a Carrier, from president down to the laborer, who do not perform some clerical work in connection with their regular duties. (Award 806 et al).

Organization likewise cites many Awards in support of its claim, which have been reviewed.

Upon full consideration of the record before us, we must and do conclude that Carrier's action in permitting Supervisory Agent, E. M. Burgamy, a person not covered by the rules of any Agreement, to perform duties of the Car Clerk position, covered by the applicable Agreement, was violative of the following Rules of the Agreement.

"Rule 5 (b)—Seniority rights of employees to * * * perform work covered by this Agreement will be governed by these rules."

"Rule 14 (a)—When reducing forces, seniority rights shall govern * * *."

"Rule 14 (e)—In reducing forces the lowest rated position in the office or department where the reduction occurs will be abolished * * *."

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 Agreement has been violated to the extent indicated.

AWARD

Claim (1) sustained only as it affects Mrs. Harold T. Blount, Jr., with the stipulation that any outside earnings of Claimant shall be compensated and deducted.

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1957.