

Award No. 11902
Docket No. CL-11651

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

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 continues to violate the Rules of the Clerks' Agreement effective December 1, 1956 when without conference or agreement it unilaterally and arbitrarily abolished the position of Chief Clerk at Tennille, Georgia, effective with the close of the work day on Wednesday, October 15, 1958, and concurrently therewith and subsequent thereto permitted or required the Agent and Operators at Tennille, Georgia, employees not covered by the Clerks' Agreement, to perform work which had theretofore been exclusively assigned to Clerks' performance, said Clerk being fully covered by the Clerks' Agreement, and that, therefore,

(2) This work shall now be restored to the scope of the Clerks' Agreement of December 1, 1956 and assigned to employees covered thereby in accordance with the rules thereof and that,

(3) Clerk L. E. Dutton shall now be paid for one (1) day's pay at pro rata rate of \$402.82 per month (including present cost of living of \$22.62 per month) subject to adjustment as provided in the Agreement of November 1, 1956 from October 15, 1958 and continuing thereafter until all of the clerical work now being performed by the Agent and Operators is assigned to Clerks' performance and that,

(4) Any and all other employees involved or affected by said violation of the Agreement shall be compensated in full for any and all monetary loss resulting from the Carrier's action retroactive to October 15, 1958.

NOTE: The Carrier's records shall be checked to determine the extent of the foregoing violation.

limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation."

When the effective collective bargaining agreement here in evidence was negotiated and executed on December 1, 1956, the original power and authority of the Central of Georgia Railway Company was modified only to the degree that it voluntarily and specifically relinquished facets of its power and authority. The only extent to which that was done is as specifically "spelled out" in clear and unambiguous language in the agreement here in evidence.

It is the further position of the Carrier that the burden of proof rests squarely upon the shoulders of the petitioners. See Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2676, and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others—all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Employees have produced no evidence of any violation.

This claim has absolutely no merit, and it should be either dismissed or denied in its entirety.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of this dispute.

Carrier, not having seen the Employees' submission in this dispute, reserves the right to present such additional evidence and argument as it deems necessary.

(Exhibits not reproduced.)

OPINION OF BOARD: On the 10th day of October, 1958, notice of the abolishment of the position of Chief Clerk at Tennille, Georgia, was given, as follows:

On October 13th, 1958, the Chief Clerk, E. C. Palmer, addressed the following communication to the Superintendent:

"Tennille, Ga., Oct. 13, 1958.

"Mr. H. L. Bishop, Jr., Supt.
Savannah, Ga.,

"Dear Sir:

"Your letter Oct 10th, file 197-CL, and Circular Number 58-68 of same date advising my position as Chief Clerk, Tennille Agency will be abolished with the close of business Wednesday Oct 15, 1958.

"Please arrange for me to displace Mr. L. E. Dutton, Yard Clerk at Tennille, Ga., effective Thursday morning Oct. 16th, 1959.

"Yours very truly,

/s/ E. C. Palmer
E. C. Palmer

"cc to Mr. B. H. Clegg, GC, BRC
Macon, Ga.

Mr. C. B. Duke, LC-BRC
Augusta, Ga.

Mr. J. H. Morris
Agent-Tennille, Ga.

Mr. L. E. Dutton, Clerk
Tennille, Ga.,"

It was almost immediately mutually agreed to that Palmer's position be changed so it should be worked from Monday through Friday with rest days Saturday and Sunday, the position formerly having been worked from Tuesday through Saturday and that Palmer's position should be changed from Yard Clerk to Chief Clerk.

No claim was handled or progressed on the property in favor of Clerk L. E. Dutton or any employee other than J. R. Strickland. No other Claimant was either discussed or mentioned prior to Carrier's final declination of the claim, May 5, 1959. There was an offer made by the General Chairman on July 27, 1959, to settle the claim made on the property on a compromise basis, wherein the names of Palmer and Dutton were mentioned as possible Claimants for the first time. This compromise offer was declined by the Carrier in its entirety.

In its first submission Carrier contended that the claim presented in either its original or amended form on the property is not the same claim as presented by the Petitioner on the property. Carrier further in the same submission objected to a consideration of the present claim before this Board, contending it is in violation of the Railway Labor Act, and more particularly of Rule 25 of the Clerks' Agreement.

"RULE 25 — TIME LIMITS

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . ."

(This Time Limit Rule is the same as contained in Article V of the August 21, 1954, Agreement.)

It will be noted that the date of the alleged violation of the Agreement is October 10, 1958; it will be further noted that no claim was made in behalf of Dutton or any other employees until September 24, 1959 at the time this matter was submitted to this Board by Petitioners. Obviously no objection could be made until in Carrier's first submission.

A reading of the Record will demonstrate that there is a variance between the claim made on the property and the one presented here; furthermore, as indicated, it is not in compliance with Rule 25 of the Agreement. For the foregoing reasons we feel the claim herein should be dismissed. The

claim having been dismissed on procedural grounds it is unnecessary for us to discuss the merits of this claim.

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.