

Award No. 13059
Docket No. CL-12775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 (GL-5040) that:

(1) The Carrier violated and has continued to violate the Rules of the Clerks' Agreement of December 1, 1956, as amended, beginning September 20, 1960 and continuing thereafter on September 21, 22, 23, 26, 27, 28, 29, 30, 1960 and October 3, 4, 5, 6, 7, 10, 11, 1960 and subsequent dates, when it required Pick Up and Delivery Clerk J. M. Miller, salary \$461.89 per month (including cost-of-living adjustment of \$29.58 per month) to desert his regular assignment in the Freight Agency Office at Columbus, Georgia and perform work which had been assigned to Warehouse Foreman A. B. Snell, salary \$497.44 per month (including cost-of-living adjustment of \$29.58 per month) since the abolishment of Assistant Warehouse Foreman's position with the close of business on June 13, 1960.

(2) Pick Up and Delivery Clerk J. M. Miller shall now be paid the difference between his regular salary of \$461.89 per month and that of \$497.44 per month for each and every day beginning with September 20, 1960 and continuing until the violation is corrected.

(3) The successor or successors in interest, if any, of Pick Up and Delivery Clerk J. M. Miller, shall also be paid in like manner.

EMPLOYEES' STATEMENT OF FACTS: For many years, Pick Up and Delivery Clerk J. M. Miller, Columbus, Georgia Freight Agency, had an assignment with duties confined to the Freight Agency Office proper, working in the Freight Agency Office with the Cashier and, in fact, as his Assistant.

With the close of business on June 13, 1960, the Carrier abolished the position of Assistant Warehouse Foreman which had been occupied for many years by S. J. Underwood, who has subsequently retired from the service of the Carrier.

Concurrently with the abolishment of Assistant Warehouse Foreman S. J. Underwood's position, the Carrier assigned all of the duties of the

OPINION OF BOARD: The parties are in disagreement as to the assignment of work after the abolishment of the position of Assistant Warehouse Foreman on June 13, 1960 at the Freight Agency Office, Columbus, Georgia. Organization maintains that Carrier assigned all of the duties of the abolished position to Warehouse Foreman A. B. Snell and that Mr. Snell performed these duties in addition to his own from June 14, 1960 to September 20, 1960. It further states that on the latter date Pick Up and Delivery Clerk J. M. Miller was assigned to perform the work which had hitherto been done by the Assistant Warehouse Foreman. Carrier, on the other hand, claims that after the abolishment of the position Pick Up and Delivery Clerk Miller was instructed to perform a small portion of the remaining clerical duties when necessary. On September 20 and the subsequent dates enumerated in the claim, he performed these clerical duties which on June 13 he was advised to assume when the need arose. Carrier emphasizes that this work had not been assigned to Warehouse Foreman A. B. Snell.

In its claim Organization maintains that Carrier violated the rules of the Clerks' Agreement, specifically Rule 34, when it required Pick Up and Delivery Clerk Miller, at a salary rate of \$461.89 per month, to perform work assigned to Warehouse Foreman with a salary of \$497.44 per month. It, therefore, asks that Clerk Miller be paid the difference between his regular salary and the higher rate of the Foreman for the days specified in the claim.

Organization concedes that if the work in question had been assigned directly to Mr. Miller after the Assistant Warehouse position was abolished, the Agreement would not have been violated since Mr. Miller was receiving a higher rate than the occupant of the position prior to its abolishment. In view of the fact, however, that Carrier did not make this assignment of duties directly to him but later assigned to him duties that belonged to the Foreman, Organization claims that Mr. Miller is entitled to the rate of pay accruing to the higher position.

The record does not resolve the conflict concerning the assignment of the duties of the position after it was abolished. Organization supports its position with the statement that Mr. Miller continued with his work in the Agency Freight Station as Assistant to the Cashier until September 20 when he was instructed to desert his duties in the Freight Agency Office proper and go into the Warehouse adjoining the Freight Agency Office and perform Foreman duties. It asserts that the Foreman took over these duties and performed them during the period of June 14 until September 20. It denies that Mr. Miller or any clerk was notified to take on the clerical work of the abolished position when necessary.

Carrier, in its submission, maintains that Pick Up and Delivery Clerk Miller was personally notified that he was to assume the clerical work of the Assistant Warehouse Foreman since he had time for this occasional additional work. It points out that the Warehouse is part of the Freight House and that Mr. Miller's duties as a utility clerk did not confine him to the specific location near the Cashier. Moreover, it emphasizes that these additional duties were only a small portion of the Warehouse work and were distinctly clerical, for they consisted of such activities as placing seals on merchandise cars, making a record of these, putting pull tags on cars and occasionally checking freight.

With conflict in the record relative to facts essential to a proper determination of this dispute and with lack of a method at disposal of this Board to resolve conflicts in evidence, the claim must be dismissed.

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.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 13th day of November 1964.