

Award No. 13766

Docket No. CL-14274

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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-5427) that:

(1) The Carrier violated and continues to violate the Rules of the Clerks' Agreement of December 1, 1956, as amended, when, beginning June 28, 1962 and continuing thereafter, it refused to assign and continues to refuse to assign Stenographer-Clerk B. Frances Capien, Office of Superintendent, Macon Division, Macon, Georgia, to temporary vacancies occasioned by the short absences from duty in this office, and that, therefore,

(2) Stenographer-Clerk, Miss B. Frances Capien, shall now be paid, in addition to compensation she has already received on her regularly assigned position of Stenographer-Clerk, the following:

| | |
|---|----------|
| June 28, 29, 1962 (2 days) @ \$23.016 per day..... | \$ 46.13 |
| July 30, 31, 1962 (2 days) @ \$21.97 per day..... | 43.94 |
| August 1, 2, 3, 1962 (3 days) @ \$21.014 per day..... | 63.04 |
| One (1) 2-hour call on Saturday, August 4, 1962..... | 8.33 |
| November 12, 1962 (1 day) @ \$21.97..... | 21.97 |
| | <hr/> |
| | \$183.41 |

(3) Stenographer-Clerk, Miss B. Frances Capien, shall hereafter be assigned to any and all positions to which her seniority and qualifications entitle her and be paid for all wage losses in the same manner as outlined in Item (2) of this claim, immediately above.

EMPLOYEES' STATEMENT OF FACTS: On June 5, 1962, Miss B. Frances Capien, Secretary to Freight Agent, Macon Freight Agency, Macon, Georgia, who was on a temporary assignment as Stenographer-Clerk in the office of Division Superintendent E. D. Glenn, having moved up to this position in accordance with the Memorandum Agreement of March 31, 1959,

Third Division AWARD 9783 (Referee Fleming)

"Award 7350 (Coffey) 'The Statement of Claim amounts to no more than the allegation that the contract has been or is being violated. It is not evidence. The charge, as laid, must be supported by fact. On the theory that the one affirmatively charging a violation is the moving party, and, therefore, should be in possession of the essential facts to support the charge before making it, this Division of the Board is committed to the so-called "burden of proof" doctrine.' While any facts that may assist in arriving at a proper conclusion may be considered, the Organization has not made a showing here that the Yardmasters performed four hours' or more work per day. The claim should be denied."

Third Division AWARD 9788 (Referee Fleming)

"* * * Furthermore, the claim must fail for lack of proof. Mere assertions and conclusions are not sufficient to substantiate a claim."

Third Division AWARD 8838 (Referee Donald F. McMahon)

"* * * It has consistently been held by this Division that the burden of proof is upon the claimant and the Organization to show beyond a reasonable doubt that the Carrier has violated the agreement."

Third Division AWARD 8768 (Referee Donald F. McMahon)

"The Board is of the opinion that from a review of the record before us, the facts submitted are not sufficient to support a sustaining award."

Third Division AWARD 8430 (Referee Carroll R. Daugherty)

"From a study of the whole record the Board is forced to conclude that the Employees have failed to support their contention. That is, the Carrier's decision not to assign Claimant to the new position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. * * *" (Emphasis ours.)

Also see other awards, including 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. These awards 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.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny the claim in its entirety.

OPINION OF BOARD: The theory of the present claim is that Claimant should have been assigned, by reason of her seniority, to fill temporary vacancies caused by the absence of the Secretary to the Superintendent.

It is undisputed that the vacancy in question was filled by a newly hired recent high school graduate, although Claimant had been in the Company's employ since October 20, 1944.

The defect in Petitioner's case is that Rule 1 (d) provides specifically that Management has the right of appointment in filling the position of Secretary to the Superintendent. Manifestly, only a single position of that category is involved, and there is no valid basis for the contention that Carrier is establishing a second position of Secretary to Superintendent when it fills a vacancy in that one position.

The exception prescribed by Rule 1 (d) is not unreasonable. It recognizes that executives, charged with sweeping and heavy responsibilities, must have the latitude of selecting secretaries of their own choice.

The claim lacks merit, and will be denied.

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; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1965.