

Award No. 13775
Docket No. CL-13828

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5288) that:

(1) The Carrier violated the Clerks' Agreement when it refused and continues to refuse to compensate the newly established position of General Utility Clerk, office of General Storekeeper, Macon, Georgia, as covered by Bulletin M-5-62, dated May 15, 1962, at salary of \$491.14 per month.

(2) Mr. Charles W. Martin, the successful bidder for this position, and all other such future incumbents of the position, if any, shall now be compensated for the difference between \$470.00 per month and \$491.14 per month, or \$21.14 per month, retroactive to May 15, 1962 and for each day thereafter until the Rules Agreement has been complied with.

EMPLOYEES' STATEMENT OF FACTS: On May 10, 1962 Carrier issued, without conference or agreement upon the salary thereof, position of General Utility Clerk at Macon, Georgia Stores under the jurisdiction of Mr. J. E. Lanier, General Storekeeper, position to be effective May 15, 1962. The duties of this position are thoroughly outlined and the salary was established at \$470.00 per month. (Employees' Exhibit No. 1).

At the time the above position of General Utility Clerk was established and the salary arbitrarily set at \$470.00 per month, there existed at this same location, in the same office, a position identified as General Foreman the duties of which despite some variation in phraseology are substantially identical to those covered by Bulletin M-5-62. This position was covered by Bulletin No. 5 and copy of bulletin covering this latter position of General Foreman is hereto attached and identified as Employees' Exhibit No. 1-A.

May 21, 1962 the General Chairman wrote General Storekeeper J. E. Lanier thoroughly outlining the position of the System Committee and called

Third Division Award No. 6378, Referee Kelliher:

"Based upon an analysis of all of the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

"AWARD

"Claim denied."

Third Division Award No. 5418, Referee Parker:

*** * * "Under our decision (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon his who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.**

"AWARD

"Claim denied."

(Emphasis added)

Also see other awards, including **Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 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 Petitioners 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.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and circumstances found in the instant claim are similar, with some minor variations to those found in Award No. 13774 wherein the same parties were involved. In this case, as in Award No. 13774, the Organization failed to establish that the Carrier violated the Agreement when it created a new position of General Utility Clerk, and we must arrive at the conclusion, as we did in Award No. 13774 that the claim must 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

Clam denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of July 1965.