

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 (GL-5769) that:

(1) The Carrier violated and continues to violate the rules of the Clerks' Agreement of December 1, 1956, as amended, when, without conference or agreement, it arbitrarily, capriciously and unilaterally established a position of Chief Clerk, Yard, Augusta, Georgia, effective August 15, 1964, at salary of \$509.03 per month, whereas the salary of this position should have been \$533.15 per month and that, therefore,

(2) The salary of this position of Chief Clerk, Yard, Augusta, Georgia, shall now be corrected to \$533.15 per month instead of \$509.03 per month — the difference being \$24.12 per month and that,

(3) Chief Clerk L. E. Dutton, the successful bidder and who was assigned to this position on or about Monday, August 17, 1964, shall now be paid the correct salary of \$533.15 per month from the date of his assignment thereto, i.e., the difference between the correct and proper salary of \$533.15 per month which he would have received had the Agreement been adhered to and the salary he actually received, i.e., \$509.03 per month, for the duration of his assignment thereto, and that,

(4) The successor or successors in interest, if any, namely, any and all other employe or employees who may have stood in the same status as Claimant and who were adversely affected, shall be paid the difference between the illegally established salary of \$509.03 per month and the correct and proper salary of \$533.15 per month, from the date he or they occupy such position, and that,

(5) The Carrier's payrolls shall be checked with the General Chairman to determine the full amounts which are due to all of the above referred to employees.

made numerous self-serving assertions, but produced no reasonable proof in support of his baseless arguments. Conference was held on the property on February 26, 1965, and the General Chairman simply re-hashed his baseless arguments in the face of evidence presented by Carrier. Since no rule, interpretation or practice has been violated, the Carrier has denied the "claim" in all handlings on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: In handling the dispute on the property and in its submission to this Board, Carrier maintained the claim had not been handled in accordance with the requirements of Article V of the August 21, 1954, National Agreement, Carrier contending that paragraph (4) of the claim on behalf of successors is barred because Article V requires the naming of individuals for whom the claim is presented. On March 17, 1965, the National Disputes Committee, established by Memorandum Agreement, dated May 31, 1963, made the following finding:

* * * * *

"The National Disputes Committee rules that Claimants have been identified on the record both by name and as the incumbents of certain positions, and that inasmuch as the term 'successors' as used in the claim refers to the successors of the named claimants as the incumbents of certain positions it adequately identifies additional claimants even though it does not specifically name them."

* * * * *

This would seem to dispose of the issue presented by Carrier under Article V of the August 21, 1954 Agreement.

The rule of the effective Agreement with which we are here concerned is Rule 34(c):

"(c) The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. Where no similar position exists in the seniority district, rates will be established by negotiation."

Claimant contends that the facts of the record clearly demonstrate that a position similar to the one at issue at a monthly rate of \$509.03 does not exist, consequently the rate unilaterally established by the Carrier at \$509.03 is not proper and that Rule 34(c) has been violated; that the rate of \$533.15 for the position as claimed by Petitioner is in effect for a position of similar kind or class—the position of Chief Clerk to Terminal Trainmaster at Savannah Yard, Georgia; that Rule 34(c) requires, only, that the wage for the new position shall be in conformity with wages for positions of similar kind or class.

Carrier contends, to the contrary, that due to an increase in the number of cars handled in and out of Augusta Yard it became necessary to add an additional clerk which led to the establishment there of the Chief Clerk position; Carrier further contends that there is no comparison between the position of Chief Clerk to Terminal Trainmaster at Savannah and that of Chief

Clerk at Augusta Yard; the work required at Savannah being much greater in volume and more extensive; that the positions of Chief Clerk at Tennille and Millen, Georgia, are comparable to the position at Augusta Yards and are of a similar kind and class, though Carrier concluded the Chief Clerk position at Georgia Yards was entitled to a higher rate of pay; Carrier finally contends that no pay increase, such as suggested by Petitioner is warranted, and if it were, this Board may not lawfully issue an award sustaining a pay increase.

Petitioner denies that the positions of Chief Clerk at Tennille and Millen are comparable to the position of Chief Clerk at Augusta Yard.

There is an apparent disagreement between the parties as to the rate of pay that should have been established for the new position. If the new position is not substantially similar to any one of those already in existence, the proper way to establish a new rate under Rule 34(c) is by negotiation. See Award 13876 (Weston), arising on this property.

In an earlier Award, Award 3484 (Douglas), we note the following: "It is not within the jurisdiction of the Board to establish new wage rates. Under the circumstances here, that should be done by negotiation and agreement of the parties." See also Award 8748 (Bailer) 12724 (Coburn) 13876 (Weston).

For other awards on this property where similar issues were presented see Awards 13774 and 13775 (O'Gallagher).

Accordingly, the rate must be established by negotiation.

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.

AWARD

Claim dismissed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.