



Award No. 16810
Docket No. CL-17184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6285) that:

(1) The Carrier violated the Clerks' Agreement on March 28, 1966, when it hired a new employe as Apprentice Clerk and placed her on the position of Cashier, in Terminal Agent's Office at Nashville, Tennessee without Bulletining the Position.

(2) The Carrier shall now be required to bulletin the position of Cashier in conjunction with the Rate Clerk Position in the office of Terminal Agent, Nashville, Tennessee, in accordance with our Agreement.

(3) Clerks C. A. Head, Miss June Wiggerman, Mrs. Nellie Elmore, Mr. A. E. Brock and other clerks affected, and/or their successors, be compensated in the total amount of \$519.39 per month for as long as this condition is continued.

(4) Mr. R. E. Horton, and his successor and/or successors, be paid at the rate of time and one half rate for two and one half hours per day, so long as the position is worked in the present manner.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the Tennessee Central Railway Company and its Clerical and Station Employees bearing the effective date of September 15, 1938, and subsequent agreements: that certain rules of these agreements are involved in instant claim which are hereinafter shown.

On March 28, 1966, so called apprentice clerk was employed and placed on the position of Cashier at Agent's office, Nashville, Tennessee. And claim was made against this action May 18, 1966 (Employees' Exhibit No. 1). This claim was denied by the General Superintendent, Mr. F. Brooks Bearden, on July 18, 1966 without conference, although conference was asked for. (Employees' Exhibit No. 2.) On September 13, 1966 the General Chairman advised

Mr. R. E. Horton	Cashier	\$519.39 per mo.	10:30AM-7:00PM
Mr. L. A. Lawrence	Car Clerk	489.49 per mo.	8:00AM-5:00PM
Mr. C. A. Head	Report Clerk	483.30 per mo.	8:00AM-5:00PM
Mr. W. H. Coles	Demurrage Clerk	479.17 per mo.	7:00AM-4:00PM
Mrs. Dorothy Williams	Apprentice Clerk	350.00 per mo.	8:00AM-5:00PM

All of the above force was assigned for eight hours exclusive of meal period Monday through Friday. The work of all of them except Demurrage Clerk Coles was performed largely within the confines of the office proper. Mr. Coles' duties required his presence in a distance section of the city until 4:00 P. M. so that he was seldom in the office itself until after that time.

To meet the need of the Terminal Agent for assistance of a personal and confidential nature to enable him to devote more time to duties which took him away from his office, Mrs. Williams, who had filled stenographic positions prior to being employed by Carrier and was qualified therefor, was promoted on August 1, 1966 from apprentice clerk to fill the vacant personal office force position of Stenographer authorized by Rule 2 — Designation of Personal Office Force — in the agreement and was assigned duties of performing stenographic work and assisting the Terminal Agent as directed, rendering needed assistance to clerks filling other assignments and any clerical work of a general nature which might be required. There has been no apprentice clerk in the Terminal Agent's office since Mrs. Williams' promotion.

Parts (1), (2) and (3) of claim here presented to your Board, as filed by letter dated May 18, 1966 (Carrier's Exhibit No. 1), were given handling as indicated in correspondence between the parties reproduced and appended hereto marked Carrier's Exhibits Nos. 2 to 8, inclusive, and were declined at all stages due to being too vague and ambiguous to enable them to be given the meaningful handling required by the agreement and the Railway Labor Act. Claim incorporated in Part (4) of claim as presented to your Board was not made until October 24, 1966 in letter from the General Chairman to the Director of Personnel (see Carrier's Exhibit No. 6) representing it as an amendment to the original three-part claim and was rejected because it was obviously a new claim barred by the provisions of Article V of the August 21, 1954 agreement.

The agreements between the parties are on file with and available to your Board and are made a part hereof by reference.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 28, 1966, the Carrier hired one Roberta Cathey as an apprentice clerk and assigned her to work in the terminal agent's office at Nashville, Tennessee. Roberta Cathey continued her service in the terminal agent's office until May 16, 1966 when she was transferred to the traffic department. On May 16, 1966 the Carrier employed Dorothy Williams as an apprentice clerk in the terminal agent's office at Nashville.

The claim of the Organization is based on its allegation that the apprentice clerks performed the duties of the cashier so that they were in fact placed on the position of cashier, which position was subject to bulletin under the governing Agreement. This is not a matter of employees who are not covered by the Agreement performing work that is within the Scope Rule of the Agreement as was the case in Award No. 15485. To sustain the alleged breach of the

Agreement the Organization must show that the new hire apprentice clerks were actually placed on the position of Cashier. This requires substantial evidence of probative value as to the duties of the position and of the performance of those duties by the apprentice clerks.

After a thorough examination of the record the Board finds that the Organization has totally failed to meet its burden of proof. The record is void of anything but general allegations and statements of ultimate facts. The Carrier has consistently denied that the apprentice clerks performed the work of the cashier.

Because we find no breach of the Agreement we need not discuss the matter of a proper remedy.

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; and

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November 1968.