

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the Clerks' Agreement:

1. When it assigned clerical work, hereinafter stipulated, to an employe not covered by the Clerks' Agreement, at Sayre, Pa., and failed and refused to bulletin and assign the position of Fuel Foreman, in accordance with provisions of the Clerks' Agreement.

2. That the position of Fuel Foreman, Sayre, Pa., shall now be bulletined to employes in the Seneca Seniority District, and be assigned to the senior qualified application, and that such senior applicant, and all employes adversely affected by this violation be compensated for all monetary losses sustained, retroactive to January 2, 1941, date of first conference concerning the violation.

EMPLOYES' STATEMENT OF FACTS: "During negotiations with the Carrier for a new agreement, prior to March 1, 1939, it developed that Fuel Foreman positions were not included in any agreement, although the positions were manned by clerical employes, except the position at Sayre, Pa., all Fuel Foreman positions were negotiated in and placed under the scope of the current Clerks' Agreement, effective March 1, 1939.

At that time, the Fuel Foreman position at Sayre, Pa., was manned by Mr. John Hannan, an employe from the Hostlers' Roster. General Manager Mr. Haines informed the Committee that Mr. Hannan was approaching the pension age and would be retired, and requested that Mr. Hannan not be disturbed from the Fuel Foreman position. The Committee agreed to the request of Mr. Haines on condition that the position would be filled by an employe under the Clerks' agreement. Mr. Haines agreed.

About the time Mr. Hannan retired in December 1940, the Carrier erected a new fueling station at Towanda, Pa., the servicing with fuel and sand of through passenger and through freight locomotives was changed from Sayre to Towanda, however, the servicing of locals, pickup, yard, etc. locomotives continued at Sayre. Two positions—one Fuel Foreman and one Fuel Clerk were discontinued at Sayre, Pa.

The clerical duties existing on the Fuel Clerk position at Sayre was transferred to the Sayre Engine House Clerk, an employe under the scope of the Clerks' Agreement.

POSITION OF CARRIER: We have never had a position as fuel foreman at Sayre, and there is no necessity for such a position now. The force employed in handling the small amount of fuel, five or six cars per day, now disbursed at that point, comprises three laborers on each trick and, certainly, there would be nothing for a foreman to do. The laborers come under the agreement with International Brotherhood of Firemen, Oilers, Helpers, Roundhouse Laborers and Railway Shop Laborers, and are under the supervision of the Engine House Foreman. The small amount of clerical work required is taken care of by the clerk in the General Foreman's office at the engine house, which incumbent, of course, comes under the agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and the keeping of the coal record is a part of his duties. The clerical work amounts to about one hour per day. There is no ground for this claim under the agreement with the Clerks, and no necessity for the position. Therefore, claim should be denied.

OPINION OF BOARD: The Clerks' Organization contends that the Carrier violated its agreement when it assigned the position of fuel foreman at Sayre, Pa., to an employe not covered by the Clerks' Agreement. The record shows beyond dispute that fuel foremen were included within the scope of the Clerks' Agreement for the first time on March 1, 1939. At that time, the supervising work connected with the dumping of coal and the fuel plant was performed by a hostler foreman. The employes contend that it was agreed that the hostler foreman, an employe approaching retirement age, should be left on the job until he vacated the position, and that the position was then to be filled by an employe within the scope of the Clerks' Agreement. The Carrier denies only that part of the alleged agreement which required the position to be filled by a fuel foreman when the hostler foreman retired. We think this dispute is unimportant, however, in view of subsequent events. The Carrier shows that the work of the hostler foreman included not to exceed 10% of the work that was properly that of a fuel foreman.

Before the hostler foreman retired, a new service station was erected at Towanda, Pa., with the result that all through freight and passenger trains were serviced at Towanda instead of Sayre. At Sayre, the large fuel trestle was dismantled and a small automatic coal loader installed. When the hostler foreman retired, the coaling and serving of engines was so materially reduced that the position was discontinued. The record shows that the work at Sayre is being handled by three laborers on each trick, who are under the supervision of the Engine House Foreman. The clerical work, except that which is incidental to the laborers' work, is handled by the clerk in the General Foreman's Office at the engine house, an employe under the Clerks' Agreement. The Carrier asserts that the clerical work amounts approximately to one hour per day.

The record is clear that the position of Fuel Foreman had never existed at Sayre. We quite agree that if such a position did exist, or if such a position was created, it would be covered by the Clerks' Agreement. But we are unable to say from this record that the Carrier is obligated to create such a position at Sayre. The Carrier says, and the record seems to substantiate it, that the position is not needed and that it would be an economic waste to create the position. It further appearing that all clerical work properly within the scope of the Clerks' Agreement is being performed by employes within that agreement, no basis exists for an affirmative award.

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 employe involved in this dispute are respectively carrier and employe 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 evidence does not show a violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1944.