

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 established "star" positions of Personnel Record Clerks, rate \$200.00, in the Superintendent Offices at Jersey City, N. J., Wilkes Barre, Pa. and Buffalo, N. Y. on December 26, 1942, without concurrence of the Committee.

2. That the positions of Personnel Record Clerks held by Mr. John Hughes, Jersey City, N. J.; Mr. Carl J. Congdon, Wilkes Barre, Pa. and Mr. Frank Lach, Buffalo, N. Y. shall be bulletined and assigned to employes in the New York, Wyoming and Buffalo Seniority Districts, respectively, in accordance with the provisions of Clerks' Rules Agreement.

3. That the successful applicants and all the employes affected by the Carrier's violation shall be reimbursed for any and all monetary loss suffered.

EMPLOYES' STATEMENT OF FACTS: At a conference held in the office of Asst. to Vice President and General Manager Mr. Haines on Dec. 18, 1942, for the purpose of discussing grievance matters, Mr. Haines informed the Committee that the Carrier was going to transfer the personnel records from the Bethlehem General Office back to the Division Superintendent Offices, from where they came, and that they were going to establish a clerical position in each Superintendent's Office, known as Personnel Record Clerk, and that they desired that these positions be known as "star" positions—excepted from the bulletin and assignment provisions of Rule 42.

The Committee advised Mr. Haines that there was no merit in placing a "star" on these positions, primarily because the duties of these positions were of a routine nature, and that the positions when located in the Division Superintendent Offices prior to the transfer to the General Office, were covered by employes under all of the agreement rules, and as such, there was no justification for excepting these positions from the bulletin rule. Also the attitude adopted by certain Officials in using the "star" as instrumentality to take clerks from the bottom of the roster and place them in the positions.

In this case, Mr. Hughes, Jersey City, seniority date June 9, 1937, is junior to 271 employes on the New York District Roster. Mr. Congdon, Wilkes Barre, seniority date May 20, 1916, is junior to 26 employes on the Wyoming Roster. Mr. Lach, Buffalo, seniority date December 1, 1932, is junior to 196 employes on the Buffalo District Roster.

covering specialized work and work of a confidential nature, and it is as necessary and as important to include in the excepted class the incumbents of the personnel department as any other position conceded by the Clerks as properly classified as excepted. When this work was handled on the Divisions, it was in charge of employees excepted under the Clerks' Agreement, and when the work was transferred to the General Office, it was in charge of employees excepted under the Clerks' Agreement; and, of course, upon returning the work to the Divisions, it was proper to place the work in charge of employees excepted under the Clerks' Agreement.

Excepted positions are covered in the Clerks' Agreement by Rule 1 (b) and (c), reading as follows:

"(b) These rules, except as otherwise specified, shall not apply to the positions listed on agreed-upon excepted lists.

"(c) In filling excepted positions, preferred consideration shall be given to senior qualified employees coming under the provisions of this agreement."

After the agreement was made with the Clerks, effective March 1, 1939, a list of excepted positions was agreed upon, in which certain positions were designated as "P" positions, certain positions "star" positions, and certain positions "R" positions, and a memorandum made as to what conditions apply to each designation, which are as follows:

"P —Rules of Agreement March 1, 1939 do not apply to these positions except as otherwise specified therein. In filling these positions, preferred consideration shall be given to senior qualified employees coming under the provisions of this agreement.

"Star—Rules of agreement March 1, 1939 apply to these positions except Rule 42 (Bulletins). Vacancies will not be bulletined but will be filled after agreement between the Head of Department and the Representatives.

"R —Rules of agreement March 1, 1939 will apply when present incumbents vacate such positions."

In our conference with the Committee in making the change in the Personnel Department, we asked only that these positions be made "star" positions, which, it will be noted, left the positions as coming under all the rules of the Clerks' Agreement, except that they would not be bulletined, but would be filled by agreement between the head of the department and the representative of the Clerks. We endeavored to convince the Committee of the fairness of our proposition, and as they would not agree, we advised them that in view of the fact that our plan was fair and reasonable, we would have to put it in effect, and requested that they join with the Superintendents in selecting men for the positions, which they declined to do. Therefore, it was necessary for the Superintendents to select the men for these positions on the basis of fitness and ability. As there was no violation of the Clerks' Agreement and the question was handled fairly and impartially, we ask that the Board deny the claim.

OPINION OF BOARD: The Clerks' Organization contends that the Carrier violated its agreement when it established three star positions in the superintendents' offices at Jersey City, Wilkes Barre and Buffalo, such positions being designated as Personnel Record Clerks. A detailed history of the handling of this work is necessary to a proper disposition of the dispute.

Prior to May 1, 1937, the personnel records of employees were compiled and retained on the divisions in charge of employees who were exempt from

the clerks' agreement. On May 1, 1937, a central personnel office was established in Bethlehem and all personnel records were transferred to that office. After its transfer to Bethlehem, the personnel work was in charge of two employes exempt from the agreement and one employe holding a star position under the clerks' agreement. On January 1, 1943, the personnel work was returned to the division offices at Jersey City, Wilkes Barre and Buffalo. The first agreement, the same being the current agreement, between the carrier and the petitioning organization was negotiated and became effective on March 1, 1939.

The record shows that in December, 1942, the carrier informed the clerks of the proposal to transfer the personnel work back to the division offices and requested a conference with reference thereto. The conference was held in which the carrier made known its desire to establish a position of Personnel Record Clerk in each of the division superintendent's offices at Jersey City, Wilkes Barre and Buffalo as star positions to take charge of the personnel work at those points. The carrier also requested that the conference consider the filling of such proposed star positions in accordance with the applicable rule requiring that they be filled by agreement between the head of the department and the representatives. The employees' organization refused to agree that such positions should be established as star positions. The carrier thereupon established the positions as star positions without agreement and requested the organization to join in the selection of the men to be used in the positions. This the organization declined to do. The division superintendents thereupon filled the positions on the basis of fitness and ability.

The carrier contends that the work to be done by the three Personnel Record Clerks was confidential in its character and as such warranted the carrier in establishing them as star positions excepted from the bulletin rule. We think the evidence sufficient to sustain the carrier in this respect, at least until such time as the positions may be reclassified by negotiation.

In view of the fact that the employes in charge of this work had never previously been subject to the bulletin rule under the clerks' agreement, we are of the opinion that the Clerks' Organization had no right to insist that the work be so treated when it was returned to the division superintendents' offices. It appears that it had always been in charge of exempted or star position employes. Consequently, the Clerks' Organization was in no position to demand as a matter of right that the work of Personnel Record Clerks be treated as positions to be bulletined under the agreement. The carrier in establishing such positions as star positions did not therefore violate the clerks' agreement.

It naturally follows that when the carrier requested a conference with the employees' organization for the purpose of filling the positions in accordance with the rules governing the filling of star positions, it was acting pursuant to the current agreement. And when the employes declined to participate in such a conference, they will be deemed to have waived their right to confer with the carrier with respect to filling these star positions.

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 employes involved in this dispute are respectively carrier and employes 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 carrier did not violate the clerks' agreement in establishing and filling the positions described in the statement of claim.

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.