

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, 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:

1. Clerks John E. Patterson, Joseph A. Bauer and Nicholas Cusano, Buffalo, N. Y., shall be paid in accordance with the Clerks' Agreement for overtime worked by them while required to assume the duties on position of Foreman during the months of July, August, September and December 1942, and January and February 1943.

2. Employees involved shall be reimbursed the difference in pay at overtime rate for all time in excess of eight (8) hours daily, and at overtime rate for work performed on Sundays and Holidays.

3. Employees involved shall be reimbursed the difference in pay between the amount paid to them on a monthly calendar days basis and what they should have received by being paid on a monthly working days basis, in accordance with the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On July 24, 1942, a temporary position of Lend-Lease Foreman was created at East Buffalo, N. Y., supervising the handling of lend-lease war materials. The duties of this position were assigned to Foreman McNamara at Tift Terminal in addition to his duties at Tift Terminal. His rate of pay at that time was \$265.40 per month, subsequently the rate was adjusted to \$273.24 per month. The volume of business handled at Tift Terminal required full time on the part of the Foreman. The Lend-Lease Foreman position was not a regular position and worked only when there was lend-lease material to load or unload at East Buffalo. Mr. Cusano worked Mr. McNamara's position at Tift Terminal while he was on the Lend-Lease at East Buffalo, during July and August 1942, as follows:

July 24, 25, 27, 28, 30, 31—8 hours daily.

August 4, 5, 7, 8, 12, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27,
28 and 31—8 hours daily.

August 29—worked 2 hours overtime.

August 30—worked 9 hours overtime. (Sunday)

Mr. Cusano was paid 1/31st of \$265.40 for each of the above dates, without overtime after eight hours or Sunday.

Effective September 1, 1942, Mr. McNamara was returned to Tift Terminal and Mr. Patterson, Lead Clerk at Tift Terminal, was assigned to the temporary position of Lend-Lease Foreman, returning to his position of Lead

CARRIER'S STATEMENT OF FACTS: On account of the heavy volume of Lend-Lease material at East Buffalo Storage Ground, the foreman in charge, at a rate of \$265.40 per month, was unable to handle it, and J. E. Patterson, J. A. Bauer and Nicholas Cusano, employed as clerks, were advanced to the position of foreman and allowed the rate of foreman, which was very much higher than their rate as clerks, in accordance with Rule 4 of the Clerks' Agreement. The Agreement with the Clerks was supplemented by agreement with the Clerks that foreman's rate of pay constitutes complete remuneration for all services performed. We fulfilled our obligation of the Clerks' Agreement when we allowed the clerks acting as foreman, the established foreman's rate.

POSITION OF CARRIER: In conference with the employes on their claim, we advised them that we could not understand the basis for the claim, as the men were handled and paid in accordance with the rules of their agreement, and we still do not understand the basis for the claim.

To cover a temporary situation on account of a heavy run of Lend-Lease material, these three clerks were assigned at various times temporarily to the higher rated position, and as they assumed the duties and responsibilities of the position, they were given the higher rate. The agreement covering foremen provides for a monthly rate of pay, constituting complete remuneration for all services performed, based on the average hours regularly employed, and the rate established includes overtime and Sunday work when required.

In order that the Board may understand the difference between the allowance for clerks and for foremen, I am quoting below the pertinent rule applying to this case:

"Rule 4. (a)

"Employes temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such positions. This provision will not apply when absent employee is paid."

The agreement covering the rates of pay of foremen was an addition to Rule 3 of the agreement of March 1, 1939, was dated March 31, 1939, and reads as follows:

"Rule 3

"Foremen's rates of pay constitute complete remuneration for all services performed. The company will not unreasonably require extra hours of service, but only hours necessary to cover the requirements of the position. Further, in some cases where more than one foreman is involved, it may be possible to stagger the hours of each man so that the additional time required of each will be reduced. It is also desirable in the case of foremen who work long hours and Sundays and holidays to allow them some time off, when desired, for personal reasons. We cannot consistently make any hard and fast rule, but the situation should be considered at all points and foremen given as much consideration as possible consistent with the work of the positions."

In view of the fact that these employes were paid in accordance with the agreement, the claim should be denied.

OPINION OF BOARD: Claimants, during July, August, September, December 1942 and January and February 1943, were intermittently and temporarily assigned to the position of Lend-Lease Foreman at East Buffalo Storage Ground. During the period, Patterson and Bauer held regularly assigned clerical positions. They were paid at the rate of \$210.00 and \$170.00 per month respectively. Cusano apparently did not hold a regular position.

The rate of pay for the position of lend-lease foreman was \$265.40 (adjusted to \$273.24) per month. For the periods they acted as lend-lease

foreman all three claimants were paid at the above rate on a calendar month basis. This was in accordance with the provisions of Rule 4 (a), which provides:

"Employees temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such positions. This provision will not apply when absent employee is paid."

As we understand it, they claim they should not only have been paid at that rate but should have been paid time and one-half time at that rate for Sunday work and for work in excess of eight hours per day.

This claim is predicated on Article 5 of the agreement which relates to Overtime, Sunday and Holiday Work. We think, however, that the provisions of that Article have no bearing on the facts presented. For, when the controlling agreement was executed there was, in effect, an agreement between the carrier and its foremen which provided:

"Monthly Salaries—Foremen and assistant foremen will be paid monthly salaries as per list attached hereto, to cover all services rendered, without additional payment for overtime or nights, holidays or Sundays. This list of salaries is based upon the present assigned hours and the hours of service now required to perform the work and responsibilities of the position. When and where and if conditions in regard to any position change so as to require the regular assignment the monthly salary will be adjusted in the proportion of the change in the number of hours regularly assigned. The Management assures the foremen and assistant foremen that no unnecessary Sunday or Holiday work or overtime work will be required." (Emphasis added)

Claimants contend that this rule applies only to regular foremen. There is no such express restriction to be found in the rule and none such may be fairly implied. On the contrary it is a fair inference that the higher monthly rate paid foremen was in consideration of their forsaking rights under overtime, Sunday and holiday rules.

Claimants during the periods covered by the claim were foremen in fact. For the time they acted as such they were paid on the basis of the foreman's rate of pay. This was in accordance with Rule 4 (a). They are entitled to no more.

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.