

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Leroy A. Rader, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated rules and understandings of the Clerical Agreement:

1. When on July 20, 1947, position of Assistant Baggage Agent Bethlehem, Pennsylvania, was abolished by bulletin, for the purpose of removing the position and work from the application of the rules and scope of agreement and transferring the position and work to employees not covered by the Agreement.
2. That Gerald L. Sacks, the incumbent of position of Assistant Baggage Agent and all other employees adversely affected be compensated for all monetary wage loss.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 20, 1947, Gerald L. Sacks was the incumbent of position of Assistant Baggage Agent, Bethlehem Passenger Station, Bethlehem, Pennsylvania, a passenger station jointly serving the Lehigh Valley Railroad and the Reading Company. Mr. Gerald Sacks had been awarded and assigned to the position of Assistant Baggage Agent by Bulletin on December 30, 1946.

On July 16, 1947, the following bulletin was posted at Bethlehem, Pennsylvania:

"Position listed below—

Title	Occupied by	Located at	Hours of Service
Asst. Baggage Agent	Gerald L. Sacks	Baggage Room, Union Station, Bethlehem, Pa.	11:40 A. M. to 7:40 P. M.

Is abolished account 'Position reverting to Lehigh Valley Railroad' effective with tour of duty ending 7:40 P. M. on July 20, 1947.

E. W. Morrison, Agent."

This action was protested by the Brotherhood Committee, and claim made account of violation of Rules and such claim was denied.

POSITION OF EMPLOYEES: The first knowledge the employees received in connection with any controversy existing relative to position of Assistant Baggage Agent at Bethlehem, Pennsylvania, was when Mr. N. N. Offerback, the incumbent of the position for a number of years, bid in and was awarded

the joint passenger station at Bethlehem were not under the scope or subject to clerical agreement in effect between the Carrier and the Clerks' Brotherhood, but were under the supervision and jurisdiction of, and were paid by, the Lehigh Valley Railroad. They are Lehigh Valley positions and employes, and as such are subject to rules, regulations and agreements in effect on that railroad. Therefore, when Reading Company employe permanently vacated the position, it was proper for the Lehigh Valley to fill the vacancy with one of its employes and in removing Carrier's employe from the position on July 20, 1947, there was no violation of the rules of agreement between the Reading Company and the Clerks' Brotherhood. There is, therefore, no basis for the claim as submitted and the Carrier requests that same be denied in its entirety.

OPINION OF BOARD: The claim, the pertinent rules of the Agreement, citation and digest of awards, and the contentions of the parties are set out above.

The historical background of the present Agreement is as follows:

There was an Agreement between the Carrier and the Employes, effective July 1, 1921, revised April 1, 1929. With the designation of the Organization as the Employes' representative, there resulted an Agreement effective April 1, 1937, and Agreement of July 1, 1944, between the parties.

The Carrier cites an Agreement between it and the Lehigh Valley Railroad relative to the operation and use of the joint passenger station and appurtenant facilities at Bethlehem, Pennsylvania, under date of February 24, 1926.

Gerald L. Sacks held the position of Assistant Baggage Agent as a Reading employe prior to July 20, 1947. On that date the position was abolished by bulletin. A controversy arose which developed into this dispute.

The Organization contends that this job is covered by the Agreement, the Carrier's position being that under its Agreement with the Lehigh Valley Railroad Company, the latter would provide facilities, hire and carry on its payrolls employes who would operate and maintain the joint passenger station at Bethlehem, which provision included the position here involved (see paragraph 14, thereof).

The Carrier contends that in the Agreement effective April, 1937, it stated in Rule 65 that it "shall supersede existing agreements", and states in argument that this provision, of course, could effect annulment only of existing Agreements between the parties; however, that this provision could not declare supersession of the Reading-Lehigh Valley Railroad Agreement of February 24, 1926.

The Organization denies knowledge of paragraph 14 of the Agreement (Reading and Lehigh Valley Railroad) of February 24, 1926, and there is evidence in the record that it never received the full text of that Agreement until this dispute arose. The Carrier contends that correspondence passed and conferences were held, based upon parts of this Agreement.

The entire question undoubtedly resolves on the proposition of the sufficiency of notice to the Organization of the provisions of the Agreement of February 24, 1926 (Reading and Lehigh Valley Railroad). We do not think that on this record the legal requirement were met in the matter of sufficient notice.

As a legal proposition the Organization was not bound by paragraph 14 of the Agreement between the Carriers. It would be necessary in order to so bind the Organization that it have actual notice of that provision of the Agreement and acquiesce in it. Sufficiency of notice cannot be predicated on inference alone.

Numerous awards of this Board are authority on the general proposition herein involved. See among others: Awards Nos. 1272, 1259, 1595, 2006, 3360 and 3563.

There is a conflict in the evidence relative to Claimant Sacks' present status. He denies in a letter on file under date of July 26, 1948, that he did resign. The Carrier does not offer conclusive evidence that he did actually resign.

The claim will be sustained.

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 Claimant Gerald L. Sacks receive his compensation, less any amounts of money received from other sources of employment during the time in question; other employees who can show monetary wage loss to be compensated.

AWARD

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.