

Award No. 5196
Docket No. CL-5163

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 on the Lehigh Valley Railroad.

1. The Carrier violated the existing clerical agreement when, on February 28, 1949, without conference or agreement with the Committee, it discontinued the Clerk-Cashier position held by Miss Agnes McInerney, Elmira, N.Y., and assigned the duties of the position to the Agent-Telephoner, who holds no seniority rights under the Clerks' Agreement.
2. That said Clerk-Cashier position be restored and advertised to clerical employees of the Auburn Seniority District.
3. Further, that Miss Agnes McInerney be reimbursed for all monetary loss suffered as the result of the Carrier's arbitrary and unilateral action.

EMPLOYES' STATEMENT OF FACTS: Prior to February 28, 1949, the force at Elmira Freight House, Elmira, N. Y. consisted of the following:

Name	Title	Rate of Pay	Hours of Duty	Clerical Seniority
A. McInerney	Clerk-Cashier	\$256.67 per mo.	8 AM to 5 PM	2/ 1/18
F. Kane	Rec. & Del. Clk.	257.47 per mo.	8 AM to 5 PM	10/ 6/19
L. G. Darr	Agent-Telephoner, covered by the Telegraphers' Agreement.			

Duties of the employees at Elmira Freight House follows:

Clerk-Cashier, Agnes McInerney. Average time consumed eight hours daily:

All work in connection with handling cash. (Prepare cash for delivery to bank in exchange for money order, making remittances, forwarded to Treasurer of L.V.R.R. by U.S. Mail.)

Prepare P & D Reports AR 265.

Preparing bills for P & D draymen.

the station that clerical positions were established. It was because of the agent requiring assistance that clerks were employed at Elmira to perform clerical work which originally flowed from the agent's position and, in the natural course, as such clerical work decreased, it would only be proper and consistent that such clerical work should flow back to the agent's position.

If the reasoning of the organization in this dispute would be determined to be correct, it would have the effect of saying that the agent at a station could not in any sense perform any part of the clerical work at his station, and require the Carrier to employ excessive forces beyond all economic or sound business reasons. Certainly, the Carrier in this case could not have abolished the agent's position, as in its business it required the service of an agent. The work that decreased materially was that of the clerks, and it was proper that in the necessary reduction of forces, a clerical position be abolished and the remaining work of that position be distributed to the extent possible to any remaining clerical positions and to the agent's position as an incidental right of his position to perform it.

The Carrier submits there was no violation of any rule of the agreement currently in effect in abolishing the clerk-cashier position at Elmira and, in so doing, the agent being required to perform some part of the remaining work of that position, and accordingly requests that this claim be denied.

OPINION OF BOARD: The System Committee of the Brotherhood contends Carrier violated its Agreement with them when, on February 28, 1949, without conference or agreement it discontinued the position of Clerk-Cashier at Elmira, New York, then occupied by Agnes McInerny, and assigned the duties thereof to the position of Agent-Telephoner, a position that held no seniority rights under the Clerks' Agreement.

It asks that the position of Clerk-Cashier be restored and advertised to clerical employes of the Auburn Seniority District and that Agnes McInerny be compensated for all monetary loss suffered as a result of the action of the Carrier.

While the position of Agent-Telephoner is under the Telegraphers' Agreement, it is not a position which performs telegraphic duties such as the handling of train orders or communications of that nature. Neither does the abolishing of the position create a one man station at Elmira. Nor does the record show the position of Clerk-Cashier to be that of an assistant to a position not under the Clerks' Agreement and performing work normally incident thereto.

This is a case where the work performed by the position is expressly within the scope of the Clerks' Agreement because the position is included therein. Consequently, the position cannot be abolished and the work, or a part thereof, assigned to and performed by employes not under the Clerks' Agreement without a violation of the scope thereof. In view thereof, all of the work of the abolished position must be assigned to and performed by employes under the Clerks' Agreement. The Agent-Telephoner not being within such Agreement the performance of the work by him was a violation thereof.

However, the fact that Carrier must assign this work to clerical employes under the Clerks' Agreement who are entitled thereto and have it performed by them does not necessarily mean that the position of Clerk-Cashier must be restored. It is sufficient compliance with the Agreement if the work be assigned to and performed by clerical employes entitled thereto. Nor is the claimant entitled to all monetary loss she may have suffered as a result of the position being abolished. Her claim in that respect is limited to the extent of being compensated for all work which the Agent-Telephoner performed since February 28, 1949, which, prior to that date, had been regularly performed by the occupant of the position. To that extent the claim is allowed, but otherwise denied.

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 Carrier has violated the Agreement.

AWARD

Claim sustained to the extent as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.