

Award No. 6482

Docket No. CL-6519

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, 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 that the Carrier violated the Clerks' Agreement.

1. When it removed the clerical work at Irvington, N. J. from clerical agreement, consisting of:

- (A) Compiling AR 621—Daily Balance Sheet.
 - a. Full Cashier's memos and balanced freight and tax on cash received.
 - b. Match checks and cashier's memos to balance freight and tax on checks received.
 - c. Balance totals and type AR 621
 - d. Type TR-9 (Deposit slips)
 - e. Endorse checks and mail deposit to bank
- (B) Separate, set up and mail bills for payment
 - a. Set up bills on delivered L.C.L. for mailing (By checking AT 265's)
 - b. Set up bills on C/L bills for mailing
 - c. Set up prepaid, C/L and LCL bills for mailing
 - d. Stamp all bills and cashier's memos with due date
 - e. Address seal and stamp envelopes
 - f. File cashier's memos in open-bill folders

(C) Set up L.C.L. bills for delivery of freight

- a. Go through all freight bills inserting arrival notices and separate bills for cash and credit patrons
- b. Notify patrons on arrival of freight
- c. Pull "under the rate" bills, mail arrival notices for freight to be picked up.
- d. Call consignees on "under the delivery-rate" bills to determine if they wish delivery with an extra charge.
- e. Mail arrival notices on GBL and COD shipments
- f. Answer telephone calls and correspondence incidental to duties performed.
- g. Pull all overdue cashier's memos and call delinquent patrons.

(D) Receive AR 265's and 266's from drivers.

- a. Check for cash paid to driver.
- b. Make sure a signed and dated delivery receipt is turned in on every shipment listed.
- c. Count cash on hand and balance with sheets and cash payments throughout the day.
- d. Compile cash and make out money order slip for agent to get at Post Office.

(E) Issue refund drafts.

The above duties were formerly assigned to a Cashier's position which was covered by the Clerk's Agreement. Effective November 1, 1943 the position of Clerk-Telephoner was transferred from Hillside, N. J. to Irvington, N. J. Some of the above duties were assigned to the position of Clerk-Telephoner which is covered by the Telegrapher's Agreement.

2. The following clerical duties are performed each day by Agent Walsh, a supervisory position excepted from all rules of the Clerks' Agreement:

- (a) Makes inspection of damaged freight and compiles reports in connection therewith. Time consumed averages two (2) hours daily.
- (b) Upon receipt of 'phone calls, traces freight shipments. Time consumed one hour daily.
- (c) Takes the total case receipts each day to post office for conversion into money orders for remitting next day to Treasurer's Office with checks. Time consumed one hour daily.

3. That the work described above be restored to employees under the Clerks' Agreement. Further, Miss Helen Goggin and others deprived of earnings as the result of this violation be determined by a joint check of the payrolls and seniority rosters since the date of January 11, 1950 until such time as the existing violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On November 1, 1943 when the position of Clerk-Telephoner was transferred from Hillside, N. J. to

January 11, 1950 until such time as the existing violation is corrected: There has been no violation of the rules of the Clerks' Agreement in this claim, and the named claimant, Helen Goggin, with the seniority she holds has not been deprived of employment. Her seniority entitles her to a position which she has maintained. She is regularly employed on a clerical position in the freight office at Irvington and has had no loss of earnings since the date of January 11, 1950, for when clerical position at that station was abolished at the time, her position and earnings were in no manner affected. As to the other unidentified claimants, the Carrier maintains that there could be no such claimants because the work conditions in the office require clerical positions to be abolished at times, and there was no need at any time during the period since January 11, 1950 for more than the established number of clerical positions and the one clerk-telephoner position coming under the scope of the Telegraphers' Agreement, which have been maintained and existed in the freight office at Irvington.

It is respectfully submitted because of the decision rendered by the Carrier to the Clerks' General Chairman, April 26, 1945, with respect to the assignment of clerk-telephoner position at Irvington freight station to perform the class and nature of work as it had been performing since November 1, 1943, that there is no merit to Item 1 of this claim and accordingly it should be dismissed. Also, for the reasons outlined, it is submitted there is no merit to Items 2 and 3 of this claim and they should likewise be dismissed and denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: This claim is opposed by the Carrier on the first ground that no notice of the hearings of this Division has been given a third party "involved" in the claim.

Section 3 First (j) of the Railway Labor Act requires:

" . . . the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them."

The word involved, which has been said to be ambiguous, is derived from the Latin "involvere" meaning to roll about or wrap up. One of the current definitions of the verb form is "to draw into a complication; implicate," and another "to roll up in itself so as to gather in, embrace or comprehend; include."

Thus we are of the opinion that as the word appears in Section 3, First (j) of the Act, it refers to employes who are implicated, or included in the matter under submission. It applies to persons substantially affected or to be affected by an order of this Board. In practice it can only mean those persons who continue to be affected and not those single fortuitous occasions wherein one's job or duty has intruded briefly on another.

From the facts shown in the docket it appears that such third party would be substantially affected by an order of the Board and further that no notice has been given such party.

In line with the reasoning on individual rights expressed in Award No. 6390 and in keeping with the various cited awards requiring the giving of notice, as well as the weight of authority in the decisions of our Circuit Courts of Appeal, we are of the opinion that unless notice is given, this Division of the Board is without authority to hear and determine the present case. Unless notice is given we have no jurisdiction over the person or persons involved.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute, the Brotherhood of Railway and Steamship Clerks and the Lehigh Valley Railroad, attended an oral hearing thereon on April 7, 1953;

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 no jurisdiction over the persons involved herein who have not been given notice of the hearing.

That this division of the Adjustment Board has jurisdiction by law over all the classes of employees and the dispute involved herein.

That the claim should be dismissed without prejudice for lack of jurisdiction over the person not notified.

AWARD

Claim dismissed without prejudice and in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.