

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Lehigh Valley Railroad violated the Clerks' agreement

(1) When it assigned the clerical work to Clerk-Telegrapher at Rochester, New York, an employe without seniority under the Clerks' Agreement.

(2) That position of Cashier at Rochester Freight Station, Rochester, N. Y., abolished March 13, 1950, be restored.

(3) The clerical employes McCowan, Frank Tuttle, Herbert Tuttle and Quinlan and/or their successors be compensated for two (2) hours at time and one-half for March 13, 1950 and each working date thereafter until the condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 13, 1950 the employes under the scope of the Clerks Agreement consisted of the following at Rochester:

G. J. McCowan	Lead Clerk
M. A. Hill	Foreman
H. W. Quinlan	Yard Clerk
F. K. Tuttle	Accountant
Earl Jenks	Cashier
L. W. Von Thenen	Rec. & Dely. Clerk
H. W. Tuttle	Clerk-Steno.
J. S. Prinzi	Checker
A. G. Abbott	Billor — OSD Work

Clerk-Telegrapher position is covered by Telegraphers' Agreement.

Billor — OSD Clerk abolished November, 1949.

The position of Cashier was abolished March 13, 1950.

The position of Checker abolished April 11, 1952.

Following is a list of clerical duties performed by Clerks:

position is supported in Award No. 615, as well as in other awards. In Award 615, the following language is used:

"For obvious reasons in diminution of force a clerk cannot under take or be accorded telegrapher's duties, but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other that of a Telegrapher, and one is abolished, the Telegrapher, if any telegraph duties remain, has the absolute right to the position, including the assumption of the remaining clerical duties."

In Award 4492 of this Division, the following is stated:

"It is the rule, long adhered to by this Board, that a Telegrapher with telegraphic duties to perform may properly perform clerical work, which is incidental or in proximity to his telegraphic work, in such amount as to fill out his telegraphic assignment."

The question here at issue is the right of telegraphers to perform clerical work in sufficient amount to fill out their telegraphic assignment where telegraph service, while necessary, is limited to brief periods of time on each work day. The above awards, as well as the rule followed in this respect by this Division in many similar instances, support the position of the Carrier in this dispute for the performance of clerical duties by a Telegrapher position.

During discussions with the Committee on the property and as referred to by the General Chairman in the letter addressed to the Carrier referred to above, dated September 12, 1952, the matter of clerical positions having been abolished at Rochester Freight Station being used as a basis to support this demand that clerical work be removed from the Clerk-Telegrapher position and assigned to positions coming under the Clerks' Agreement, is not sound. It naturally follows if there is only one position at a point to handle work by telegraph and there is remaining work of that kind to perform, when the conditions of work change making it necessary for economic reasons to reduce forces, the reduction must necessarily come in the clerical positions. Conversely, if the business in an office increases to the point where additional positions are required, additional clerical positions are established unless the increased work is exclusively that coming under the Telegraphers' Agreement.

The type, class and amount of clerical work performed by the Clerk-Telegrapher position at Rochester is relatively about the same as it has always been and was not changed as a result of abolished clerical positions at Rochester Freight Station during 1949, 1950 and 1952. The clerical position abolished in 1952 was completely associated with platform freight handling forces, and none of the duties of that position were associated in any way with the clerical work performed by the Clerk-Telegrapher position before or after the abolishment. In view of the continuing requirement for telegraph service at Rochester Freight Station and the handling of train orders during hours the position is assigned, when no other position coming under the Telegraphers' Agreement is on duty to perform this class of work, and the fact that the clerical work assigned to the Telegrapher's position to perform is in the same office, and that there has been relatively no change in the type or class and amount of clerical duties, the Carrier respectfully submits there is no merit to this claim and it should be 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 question presented is identical with that raised and decided in Award No. 6482. The same reasoning, opinion, findings and award expressed therein are repeated and re-stated as our opinion in the present docket.

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, find and holds:

That the parties to this dispute, the Brotherhood of Railway and Steamship Clerks and Lehigh Valley Railroad Company, 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 classes of employees and the dispute involved herein.

That the claim should be dismissed without prejudice for lack of jurisdiction over the persons 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.