

Award No. 11676
Docket No. CL-11573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinchart, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated, and continues to violate, the Clerks' Agreement in the Mail Terminal at Hoboken, New Jersey, when:

(a) On April 10, 1958, it denied Pasquale Bellomo the privilege to exercise displacement rights on the position of General Foreman then held by Joseph Burton, a junior employe, and that;

(b) Mr. Bellomo shall be re-imbursed in the amount of the difference between what he has been paid and what he would have earned had he been properly assigned to the position of General Foreman, and that;

(c) Mr. Crowley, Mr. Mario Marinelli and other employes, involved in the succession of displacements that followed, (to be determined by joint check of Carrier's payroll and other necessary records), shall also be reimbursed for all monetary loss suffered since Mr. Bellomo was forced to exercise displacement rights on a position other than the one of his choice, and that;

(d) All monetary claims mentioned herein shall be retroactive to April 10, 1958, and shall continue until such time as the violations have been adjusted.

EMPLOYEES' STATEMENT OF FACTS: Pasquale Bellomo entered the service of the Carrier on June 2, 1942, and established a seniority date as of that day, under our Rules Agreement, on the Group 2, M&E Division Roster.

On April 9, 1958, as the result of a force reduction, Mr. Bellomo, who held a regular assigned position in the Hoboken Mail Terminal was displaced by a senior employe exercising displacement rights under the terms of the current Clerks' Agreement. Mr. Bellomo then notified Mr. John G. Drake, Terminal

and the Management will be permitted to fill them by appointment.”
(Second exception).

These exceptions clearly grant Management the right to fill this position by appointment only, and the wording of these exceptions does not restrict that appointment to be for certain indefinite periods such as the Organization proposes. If such restriction of appointment existed, such restriction most certainly would have been incorporated in that portion of the Scope Rule quoted above.

The Carrier denies each and every allegation of the Organization and the validity of every argument advanced by it at variance with the Carrier's position and pleadings in this case.

OPINION OF BOARD: As a result of reduction of forces, Claimant Bellomo was displaced by a senior employe and thereafter notified Carrier of his desire to displace on a General Foreman position held by a junior employe, Burton. On April 10, 1958 Carrier denied the request of Bellomo upon the premise that it alone had the right to determine who should occupy the position of General Foreman.

The recent Award No. 11335 (Coburn) concerned a dispute between these same parties involving the same rules. It cites many awards. It is in point here and we follow it.

Carrier contends now that Bellomo was not qualified for the job of General Foreman and that he was in Seniority Group 2 and could not displace General Foreman because General Foreman was in Seniority Group 1. The record does not show that either of these reasons were presented on the property. In fact the record does not show that Burton was in Seniority Group 1.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 11676

Docket No. CL-11573

Name of Organization:

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

Name of Carrier:

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

Upon application of the representatives of the employes involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made.

The Organization contends that in order to comply with the Award, Carrier must pay to Mr. Bellomo the difference between what he earned as a Mail Handler and what he would have earned had he been assigned to the General Foreman position and to continue until Mr. Bellomo or an employe his senior is placed in the General Foreman position, including all overtime and rest days worked by the incumbent of that job.

It is our interpretation that the Award did not consider or contemplate including overtime or rest days which might be worked. That would be speculative and indefinite. The claim did not specify overtime or work on rest days, nor did the Award so specify. In the absence of specific direction in the Award, Bellomo is not entitled to the overtime or rest days worked by Burton, who held the General Foreman's job. Interpretation No. 1 to Award No. 2144, Interpretation No. 1 to Award No. 9765 and Interpretation No. 1 to Award 10035.

The Carrier contends now that the claim period ended when Myricks bid for the General Foreman's job January 12, 1959. That contention was not made when the claim was before this Board. It is a new issue which cannot be considered now. This Board has held that an interpretation does not mean to make a new Award. Interpretation No. 1 to Award No. 10878, Serial No. 203. The Award is not ambiguous. If an Award should be changed because of subsequent events, there could be no finality.

Referee Jim A. Rinehart, who sat with the Division as a neutral member when Award No. 11676 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1965.