

Award No. 11767
Docket No. CL-11704

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

LEHIGH AND NEW ENGLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. That Carrier violated the rules, understandings and practices when, at the close of business July 15, 1958, it unilaterally discontinued and nominally abolished position of Chief Clerk to the Superintendent, rate—\$473.77 per month, located at Pen Argyl, Pa., transferring duties and work to lower rated employees in the same office, other point seniority districts and offices, as well as to the office of Vice President and General Manager, where all clerical employees are excepted from specified rules by agreement.

2. As result of such violations outlined in Claim #1, the Carrier be required to compensate the senior unassigned furloughed employees (Jeanne A. Bangs, and/or her successor as the regularly senior unassigned employees) in Seniority District #4, at the rate of \$473.77 per month (rate as of July 16, 1958), together with any subsequent adjustments resulting from wage agreements, for each and every day (Monday to Friday inclusive) beginning July 16, 1958 and continuing until Carrier properly complies with and eliminates violation of applicable rules and Memorandum of Agreements; and

3. The Carrier also be required to compensate incumbent employees of positions to which duties of the previously existing position of Chief Clerk were reassigned (namely: Harrison Kline, Jr., T. Theodore, Jr., William Phillips, Weston Miller and Walter Kellow, and/or their successors as incumbents of such positions) the difference in their respective rates of pay and the rate of pay of the previously existing position of Chief Clerk, including any subsequent adjustment that might be due to wage agreements, beginning July 16, 1958 and to continue until rules violations are corrected and proper negotiations for transfer of duties are complied with.

EMPLOYES' STATEMENT OF FACTS: Prior to July 15, 1958 there existed in the Superintendent's office at Pen Argyl, Pa., Point Seniority District "N", the following clerical positions:

- 26 — Basic Rates.
- 27 — Rating Positions — Change in rates.
- 29 — Adjusting Rates.
- 30 — Preservation of Rates, par. (a).
- 35 — Vacations, including Appendix 1.
- 41 — Mutual Agreements.
- 44 — Effective Date and Changes.
- Memorandum Agreement No. 1.
- Memorandum Agreement No. 24.

However, the very enumeration including as it does so much irrelevant matter shows that it is not being seriously put forth and to argue that the Carrier's action was in compliance with each of these rules would simply be a waste of the Board's time. The Carrier contends that it has acted in the exercise of the authority reserved to it and pursuant to the applicable requirements of the agreement, specifically Rule 29(b), and Memorandum of Agreement No. 24.

The Carrier, therefore, respectfully requests that the claim be denied. The statements made herein in support of the Carrier's position have been made in substance to the representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: When Carrier abolished the Superintendent's office at Pen Argyl, Pennsylvania on July 16, 1958, it discontinued the Chief Clerk's position. The two clerks remaining in the office were placed under the supervision of the Trainmaster Road Foreman, who now reported to the President and General Manager because of the elimination of the Superintendent's office. Organization on behalf of six clerks filed claim that Carrier violated the rules, understandings, and practices when, without proper notification, it transferred and distributed the duties of the Chief Clerk to the two lower rated employees in the same office and to other seniority districts and offices.

Carrier contends that because of shrinking business the elimination of the Office of Superintendent and its Chief Clerk was necessary. The abolishment of the job of Chief Clerk was not a device to change titles or redistribute work to clerks in a lower salary level. Carrier further states that it conformed to the agreement by posting Form PI under Rule 6(a) which gave to the employees 48 hours advance notice of the intended reduction in force. It asserts that it complied with the Memorandum of Agreement No. 24 by sending a letter dated July 9, 1958 to Organization stating its intention to eliminate the Chief Clerk's job effective July 15, 1958. By this date not receiving a request for a joint conference on the reassignment of the remaining clerical work, Carrier abolished the job of the Chief Clerk and proceeded with the distribution of duties.

The issue is whether Carrier complied with the proper procedures under the Agreement in the notification of the proposed elimination of the job of Chief Clerk and in the disposition of the remaining work. Memorandum of Agreement No. 24, adopted "in order to avoid any misunderstanding with respect to the discontinuance or abolishment of positions, or elimination of work in the application of Rules 27 and 29" is controlling in determining the procedural steps to be taken by the parties in this dispute. Item 1 of the Memorandum, as well as Rule 6(a) of the Agreement requires that Carrier give the employee affected at least 48 hours advance notice of the discontinuance of the job. This provision was complied with when Carrier posted Form PI within the time prescribed.

In addition, in accordance with Item 2 of the same Memorandum Carrier notified Organization by letter of July 9, 1958. This provision reads:

"... employing officer or supervising official will notify local and division chairman in writing at least 5 calendar days in advance of abolishing any position...."

Organization maintains that it did not receive notice of Carrier's intention to abolish the position until July 15, 1958, the date the position was terminated. On July 10 Organization sent two letters to Carrier, one to indicate that it did not receive notice of Carrier's intent to abolish the job, and the second to protest improper handling of the abolishment. Later Organization asserted it received notice on July 15 and that this letter was unethically predated to comply with the five day notice requirement. The two letters are inconsistent, for one claims no notice and the other protests the abolishment of the job. The latter is an admission of knowledge of Carrier's action. Furthermore, Organization has not presented proof to sustain its charge that the letter it received from Carrier was predated. In the absence of this proof, we reject Organization's allegations. We find from the record that the letter from Carrier was a proper five day notice in accordance with Item 2 of the Memorandum.

Item 4 gives Organization the right to request a joint conference if it is not in agreement with the operational changes which Carrier plans to put into effect upon the abolition of the job. This item follows:

"If the employing officer or supervising official is notified by the Local or Division Chairman before the effective date of the abolishment of the position of any disagreement concerning the re-assignment of the remaining work items, an immediate report will be made to the head of the department and prompt arrangements made for a joint check between a representative of the Management and the Organization."

At no time did Organization indicate to Carrier that it was dissatisfied with the reassignment of the remaining clerical duties; it only continued to protest the discontinuance of the job of the Chief Clerk. If the procedural requirements are to be fulfilled, the special Memorandum to supplement the Agreement in order to avoid misunderstanding in the abolition of a job should be followed meticulously by Organization as well as by Carrier. Organization having failed to express itself in accordance with its privilege under Item 4, Carrier proceeded with the assignment of the work remaining after the elimination of the job of the Chief Clerk as permitted in Item 3.

When Organization relies on Rule 29 of the Agreement without considering it in relation to the Memorandum which clarifies the procedural steps to be taken, it fails to give proper interpretation to the entire Agreement. The neglect of Organization to respond to Carrier's intent as provided for in the Memorandum, not Carrier's breach of Rule 29, led to the distribution of the unassigned duties without a joint conference.

We hold that since Carrier did not violate the Agreement, no valid basis for compensation requested for petitioner exists.

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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1963.