



Award Number 17832

Docket Number CL-18179

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6552) that:

1. Carrier violated the provisions of Memorandum of Agreement dated July 23, 1964, effective August 1, 1964, in Office of Auditor of Revenues, Cleveland, Ohio when on October 1, 1964 it abolished position of Rate Revision and Percent Clerk established by Section 3 thereof.
2. Carrier shall be required to negotiate an agreement amending or supplementing Memorandum of Agreement dated July 23, 1964 to cover the desired changes.
3. Carrier shall reimburse the following employees involved and affected as a result of Carrier's unilateral action for any and all wage loss sustained, retroactive to October 1, 1966.

J. Bridge
G. Raisbeck
E. T. Manning
C. L. Lamoureux
Irene Petonic
Lucy Percie
Gladys Smejsik
R. L. Williams, Jr.
W. A. Mauerer
R. M. Cawley
K. R. Blask
J. J. Prentice
T. J. Edwards
P. J. Kovary
B. D. Cosenza
R. G. Nairus

R. A. Torowski
J. J. Petrokonis
D. F. Miskinis
R. A. Boyle
Barbara A. Carney
Carol Broestl
Joann Sotos
Rosemary Knickerbocker
Virginia McCarthy
Sarah Yambor
Ann Kuratnick
Shirlee A. Stefanic
Patricia Mangan
Kathleen Reilley
K. H. Ruffin

(Claim 1845)

EMPLOYEES' STATEMENT OF FACTS: Prior to August 1, 1964, there were three clerks employed in the Coal Revenue Bureau of the Auditor of Revenues Office, Cleveland, Ohio, who were assigned to do the work of ob-

Consistent with the letter of understanding, supra, employees affected by the change from manual to machine method of work covered by the July 23, 1964 Memorandum of Agreement continued to be paid for the period prescribed in Section 6 (see penultimate paragraph of Carrier's letter of September 15, 1966, Exhibit A) and all other provisions and conditions thereof were null and void.

Notwithstanding, on November 26, 1966 claim was instituted (Carrier's Exhibit E and denied; timely handled on appeal and denied at all levels. Copies of pertinent correspondence in the handling of the case is attached as Carrier's Exhibits F through P.

(Exhibits Not Reproduced)

OPINION OF BOARD: Under a Memorandum Agreement dated July 23, 1964, the carrier on August 1, 1964, made certain changes in work procedures in the Coal Revenue Bureau whereby work previously performed manually was thereafter performed by machine operation. The Memorandum Agreement was required to effect the change because of that portion of Rule 1, the Scope Rule of the basic Agreement, reading as follows:

"In the event any work which is now performed by employees within the Scope of this Agreement by manual operations should be transferred to mechanical operations, the operation of such mechanical devices, of whatever nature they may be, will be performed by employees covered by this Agreement, and shall be a matter of negotiations."

The changes provided for by the Memorandum Agreement included the abolishment of certain positions, the establishment of one new position, protective benefits to employees affected by the reduction in force, etc. The Memorandum Agreement also included as Section 11 thereof the following:

"This Agreement shall become effective August 1, 1964, and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended."

Subsequently, by reason of decrease in coal traffic, the Carrier under date of September 15, 1966, proposed further changes in procedures which would result in abolishment of three positions, one position being the one that was established under Section 3 of the Memorandum Agreement of July 23, 1964. The General Chairman indicated that in line with usual practice he had no objection to the District Chairman working out the details to accomplish the desired changes, and suggesting that the Memorandum Agreement of July 23, 1964, be amended or supplemented. The details were worked out with the District Chairman, the changes were made effective October 1, 1966, but the Memorandum Agreement was not supplemented or amended, the Carrier subsequently taking the position that all provisions of the Memorandum Agreement, with the exception of Section 6 thereof, having been superseded by the National Agreement of February 7, 1965, pertaining to Job Stabilization. We pause here to note that the claim makes reference to Carrier having abolished on October 1, 1964, the position that was established August 1, 1964, under the provisions of Section 3 of the Memorandum Agreement of July 23, 1964. The date of October 1, 1964, is obviously in error and the parties in handling the dispute on the property and before this Board have at all times referred to the date being October 1, 1966.

In submitting the dispute to this Board the Petitioner states that it "did not progress this claim on a violation of a certain rule of the Clerks' Agreement or a violation of the February 7, 1965 Agreement, but strictly on the basis of Carrier violating the July 23, 1964 Memorandum of Agreement." Petitioner further states that the Carrier "infers the Organization's contention is that the Carrier is precluded from abolishing the position of Rate Revision and Percent Clerk. This is not so, but the Organization does contend that when Carrier abolished the position, it modified and changed the agreement, which can only be done by complying with the provisions of the Railway Labor Act, as amended, therefore Carrier violated Section 11 of the July 23, 1964 Memorandum of Agreement." We have carefully reviewed the Memorandum of Agreement and find it confers no contractual rights superior to those in the basic agreement between the parties. We do, however, find that the provisions of Section 11 thereof were violated when the Carrier failed to supplement or amend the Memorandum of Agreement to provide for the further changes effected October 1, 1966. Accordingly, we will sustain paragraph 1 of the claim.

The relief requested by Petitioner in paragraph 2 of the claim is beyond the authority of this Board and this portion of the claim must accordingly be dismissed.

Paragraph 3 of the claim requests that certain named individuals, 31 in all, be reimbursed for any wage loss sustained as a result of the changes effected October 1, 1966. The Carrier disputes the number of employees affected and names 18 who were affected by such change and further states all of such employees have received allowances due them under the provisions of Section 6 of the July 23, 1964 Agreement. This Board is unable to resolve the conflict of fact as to the number of employees who were affected as a result of the October 1, 1966 change, nor can we determine if all affected employees have been reimbursed in accord with the provisions of the Memorandum Agreement. We can only hold that all employees who were adversely affected should be made whole in accord with the provisions of the Memorandum Agreement. If they have been so compensated then nothing further is due them. If they have not been so compensated then they are entitled to reimbursement as provided for in the Memorandum of Agreement.

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 Memorandum Agreement was violated to the extent indicated in the Opinion.