

Award No. 18386
Docket No. CL-18689

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6780) that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised, when, effective September 29, 1967, it "abolished" the position of Lighterage Clerk then rated at \$591.03 per month and held by H. J. McGowan and assigned the major portion of the remaining duties thereof to a Clerk Position in the Traffic Department then rated at \$547.21 per month and occupied by J. De Angelis; and,

(b) Carrier further violated the Agreement when, after the reassignment of the work of the Lighterage Clerk to Mr. De Angelis, it assigned and/or permitted occupants of so-called "P" positions to perform the work of Mr. De Angelis's position; and,

(c) Carrier shall now be required to pay Clerk De Angelis the difference between the rate of his Clerk position and that of the "abolished" Lighterage Clerk Position for each and every work day commencing October 1, 1967, and continuing thereafter until the violation is corrected; and

(d) Carrier shall also be required to pay Mrs. M. Cebula, oldest clerk on the extra list her successor or successors, in accord with their seniority standing and proper application of the Agreement, the extent of their loss of earnings opportunity each and every work day effective October 1, 1967, and continuing thereafter until the violation referred to in paragraph (b) hereof is corrected by having the work performed by Employees covered by all the Rules of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement as revised May 1, 1955, and subsequently thereto, referred to as the Agreement between the parties, the Lehigh Valley Railroad Company and the

Further, no claim was made on the property for Mrs. M. Cebula or any other clerk on the extra list. Despite this, we now find that the claim before your Board, item "D" makes claim for M. Cebula, et al, none of whom were introduced on the property as claimants in this case.

Effective September 29, 1967, the position of Customs Teletype Clerk located at 140 Cedar Street, New York City, N. Y. was abolished, only after considerable study by Management and the discontinuance of some work and the assigning of other clerical work of the abolished position to other Clerk positions at Claremont Terminal, Jersey City, N. J., except for one item, i.e. date stamping lighterage orders delivered by customers to 140 Cedar St., N. Y., and stuffing said orders into an envelope for Claremont Terminal, LVRR Co. for processing and handling. Claremont Terminal locates in Jersey City, N. J.

Prior to the abolishment of the position, such orders received and date stamped were teletyped, by means of a teletype machine located at 140 Cedar St., N. Y. to Claremont Terminal by the incumbent of subject job. When the position was abolished, the teletype machine used for transmission of the orders to Claremont Terminal was disconnected and shortly thereafter it was physically removed from 140 Cedar Street (Carrier's Exhibit "B", sheet 2.)

All that was necessary to be done thereafter was the date stamping of orders delivered by customers and placing them in an envelope picked up and delivered to Claremont Terminal by a LVRR Co. Messenger, a clerical scope, Group I Clerk (Carrier's Exhibit "B", sheet 2.)

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant contends that since September 29, 1967, when the position of Lighterage Clerk was abolished, he has been performing the bulk of the duties which had been performed by the last occupant of the abolished position. Claimant's rate of pay is below that which applied to the abolished position. Claim was made on the property for Claimant to receive the higher rate which attached to the new duties which he assumed.

We find that Claimant has in fact performed most of the significant duties described in the bulletin of the abolished job since the date of abolishment. Rule 19 (e) of the pertinent Agreement provides:

"(e) Where the work of an abolished position is assigned to employees coming under the provisions of this agreement, such work will be assigned to a position or positions with rates equal to or in excess of the rate of the position abolished."

We hold that Carrier violated Rule 19 (e) by assigning the work of the abolished position to a lower rated rather than equally rated job and also find that an equitable remedy for this violation is to require Carrier to apply the rate of the abolished position to Claimant for the period in which Claimant performed the work of the abolished position. We so rule.

Claimant also contends that some of the work he had done prior to his assumption of the duties of the abolished positions are now being assigned

to excepted employees. Claimant presents no clear evidence that such a violation occurred and makes no showing that any employee covered by the Agreement suffered any loss in connection with this allegation. We shall deny this portion of the claim.

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 Carrier violated Rule 19 (e) to the extent described above.

AWARD

Claim sustained in part and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.