Award No. 18466
Docket No. CL-18740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, 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-6793) that:

(a) The Carrier violated Memorandum of Agreement between the Lehigh Valley Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, dated May 1, 1967, when on May 6, 1969, they abolished position No. 157, Clerk in the Bethlehem General Office Seniority District, instead of assigning it to the senior qualified bidder who had applied for the position, in accordance with advertisement of the position by Bulletin No. 3159, dated April 28, 1969.

(b) Position #157 Clerk, shall be restored effective May 6, 1969, and be assigned to senior applicant Madeline A. Stoll as of that date, and she shall be compensated in accordance with the rate of that position from May 6, 1969 until June 6, 1969 inclusive, the date on which Carirer in accordance with Memorandum of Agreement dated May 1, 1967, obtained necessary credit under Section 3, for reducing guaranteed number of positions.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employes as representatives of the craft or class of employes in which the claimant in this case held a position on the Lehigh Valley Railroad Company — hereinafter referred to as the Brotherhood and the Carrier, respectively. In 1966 the Carrier notified the Brotherhood of it's intention to merge all positions and employes of various seniority districts in the Bethlehem General Offices, into one Seniority District to be known as the "Bethlehem General Offices Seniority District." As a result of subsequent conferences and negotiations, a Memorandum of Agreement was signed May 1, 1967 covering merging of the rosters, and spelling out conditions that would be applied as a result thereof. The negotiation of this Memorandum of Agreement had taken over a year to complete, the delay occasioned by Brotherhood insistence that the agreement provide protection against indiscriminate abolish-

completely false and cannot be substantiated even for a single credit, as they exercised their accredited abolishments to the full 6% allowable in the first two years. The Carrier on September 23, 1969 replied (see Exhibit 9), denying our claim once again but introducing no new arguments to sustain their position. Supporting the Brotherhoods claim for time shown under (b) STATEMENT OF CLAIM, for period May 6 to June 6, 1969, on June 6, 1969, employe Isabel Reynolds holding seniority rights on the Bethlehem General Offices Roster, retired from service with the Carrier (see Exhibit 10), an attrition credit thus became available to the Carrier under Section 3, of the Memorandum Agreement, so position 157-Clerk, could justifiably have been abolished on June 7, 1969.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect on this property an Agreement dated May 1, 1955, and an Agreement dated May 1, 1967, which by this mention are made part of this submission.

Also part of this submission are Carrier's Exhibits "A" through "G."

Section 3 of subject Memorandum of Agreement dated May 1, 1967, reads as follows (Carrier's Exhibit "G"):

> "The Carrier agrees that the protective conditions of the February 7 1965 Agreement shall apply, except that the number of regular positions of record as of December 31, 1966 shall not be reduced except to the extent employes leave the service of the company by reason of retirement, resignation, death or dismissal for cause. Such reduction in positions shall in no event exceed 6% per annum."

From May 1, 1967 to, but not including May 1, 1969, by the terms of the Agreement, Carrier could have reduced the total number of positions by twenty-two (22) which represents 6% of 188 positions (as of December 31, 1966) per annum for a period of two years.

(Exibits not reproduced.)

OPINION OF BOARD: Under date of May 6, 1969, Bulletin No. 3160, issued by Carrier, abolished position No. 157 Clerk. In so doing, Petitioner contends that Carrier violated Section 3 of the Memorandum of Agreement dated May 1, 1967. Section 3 reads as follows: "The Carrier agrees that the protective conditions of the February 7, 1965 Agreement shall apply, except that the number of the regular positions of record as of December 31, 1966, shall not be reduced except to the extent employes leave the service of the Company by reason of retirement, resignation, death, or dismissal for cause. Such reduction in positions shall in no event exceed 6% per annum."

Petitioner contends, and Carrier agrees, that under this Agreement the period of attrition credits extends from May 1, 1969 to and including April 30, 1970. It is Petitioner's contention that no position can be abolished until after an attrition credit is earned in a particular year commencing May 1. Since there were no retirements, resignations, deaths, or dismissals for cause between May 1, 1969 and May 6, 1969, the date position 157 was abolished, Carrier had earned no attrition credits as of May 6, 1969 and consequently on positions could be abolished. Since Claimant was the senior applicant for position No. 157, this claim was filed on her behalf.

Carrier counters by stating that the Agreement was not violated since for the annum May 1, 1969 to April 30, 1970, the number of positions abolished did not exceed its attrition credits earned during that period nor was the 6 percent limitation exceeded. Furthermore, it had accumulated attrition credits in the preceding annums which could be carried over to the year in question and thus could be used to abolish positions in this year.

It is a fundamental rule of contract construction that we must ascertain and give effect to the intention of the parties from the language employed in the written Agreement. We cannot look beyond the language and supply something that is not there. Applying this rule to the May 1, 1967 Memorandum of Agreement, this Board finds the Carrier's contention without merit.

The language in the May 1, 1967 Agreement is clear and unambiguous: "* * * the number of regular positions of record as of December 31, 1966, shall not be reduced except to the extent employes leave the service of the company by reason of retirement, resignation, death, or dismissal for cause." There is no language in the Agreement allowing Carrier to determine retrospectively whether or not it had earned sufficient attrition credits during the annum to justify its prior abolishment of a position. Nor does the Agreement grant Carrier the right to accumulate attrition credits from year to year. This Board is without authority to include such language into the Agreement when the parties could have easily done so themselves.

The Carrier can abolish positions only after it has earned an attrition credit in the annum in question. Carrier could not possibly forsee that an employe would retire or resign, or die or be dismissed for cause so as to justify its abolishment of a position before that occurrence materialized. If such was the case, the Organization could perfect alleged violations of the May 1, 1967 Agreement only at the termination of each annum. The parties never intended the Agreement to be so construed.

Since Carrier had not earned an attrition credit for the annum May 1, 1969 to April 30, 1970 when it abolished position No. 157, it was in violation of the 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 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 jurisditcion over the dispute involved herein; and

That the Carrier did violate the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

CARRIER MEMBERS' DISSENT TO AWARD NO. 18466 —
DOCKET NO. CL-18740

(REFEREE O'BRIEN)

This is an erroneous award. The majority states:

> "Petitioner contends, and Carrier agrees, that under this Agreement the period of attrition credits extends from May 1, 1969 to and including April 30, 1970."

This is not so. It was pointed out to the neutral that Carrier did not agree with this statement. Such statement was made by an acting supervisor who was not in a position to interpret the Agreement; that he had no part in, or connection with the writing of the Agreement nor did he have the status of interpreting this or any other labor agreement on this property. Consequently, such a comment did not and could not indicate or represent the position of the highest officer designated to handle labor matters and who participated in the writing of the agreement and who was signatory thereto. It is the Carrier's position that:

> "* * * the May 1, 1967 Agreement does not restrict the Carrier from abolishing positions as long as the necessary number of attritions take place prior to close of business April 30, 1970.
>
> It is our further position that the agreement does not restrict carrier to making such position abolishments only after such attritions have actually occurred."

There was no violations of the agreement as the number of positions reduced did not exceed 6%, nor was it in excess of the number of employes attrited as of April 30, 1970 or any other date since the agreement became effective. For these reasons we strongly dissent to this award.

H. F. M. Braidwood
H. F. M. Braidwood

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