



Award No. 18923
Docket No. CL-19173

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, 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-6916) that:

1. (a) Carrier violated the Clerks' Agreement effective May 1, 1955, as revised, when it failed to restore position of Clerk, last held by P. M. Trischitta, at Perth Amboy, N. J., which was "abolished" on March 15, 1968, due to strike at Copper Works, at end of strike; and,

(b) Carrier further violated the Agreement when, effective May 13, 1968, after the copper strike was ended, instead of restoring the position as such, it put on a position of "Clerk" and worked same 3 and/or 4 days per week and awarded same to a junior available furloughed extra list employe thereby violating Rule 42, and related rules, and depriving senior available furloughed employees of their rights and work opportunities; and,

(c) Because of such violations, Carrier shall now be required to pay Mrs. B. Young the difference between the number of days she worked the position and 5 days per week as required under the rules, for each and every week from May 13, 1968, forward until the violation is corrected; and,

(d) Carrier shall also be required to pay Mrs. B. Young for two (2) hours per day travel time for each and every day she performed work on the position from May 13, 1968 forward until the violation is corrected; and,

(e) Carrier shall also be required to pay a day's pay to the senior available furloughed Clerk (Mrs. H. Cebula or her successor) on the extra list for each and every day Mrs. B. Young worked the position plus two (2) hours per day travel time from May 13, 1968 forward until the violation is corrected; and,

(f) Carrier shall be required to restore the position five (5) days per week as required by Rule 42; and,

2. (a) Carrier violated Rule 33, Time Limits, when Supt.-Stations, De Longis, failed to answer the appeal claim (Claims 1. (a) through (f) above) from General Chairman Baier as required under said rule; and,

(b) Due to Carrier violating Rule 33, Time Limits, the claim must be allowed as presented.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement as revised May 1, 1955, and subsequent thereto, referred to as the Agreement between the parties, the Lehigh Valley Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. Said Agreement is on file with your Board and, by reference thereto, is hereby made a part of this statement of facts.

There is also a past practice, confirmed in part by letter of understanding of April 22, 1968, (Employees' Exhibit No. 1) of restoring clerical positions abolished as the result of strike conditions to the pre-strike conditions, as soon as the strike condition ends.

In addition there is currently in effect on this property Award of Arbitration Board No. 298, Section II A, B, and C, which reads as follows:

"A. The Carrier shall designate a headquarters point for each regular position and each regular assigned relief position. For employees, other than those serving in regular positions or in regular assigned relief positions, the Carrier shall designate a headquarters point for each employee. No designated headquarters point may be changed more frequently than once each 60 days and only after at least 15 days' written notice to the employee affected.

B. When employees are unable to return to their headquarters point on any day they shall be reimbursed for the actual reasonable cost of meals and lodging away from their headquarters point not in excess of \$7.00 per day.

C. An employee in such service shall be furnished with free transportation by the railroad company in traveling from his headquarters point to another point, and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other transportation used in making the trip; or if he has an automobile which he is willing to use and the Carrier authorizes him to use said automobile, he will be paid an allowance of nine cents for each mile in traveling from his headquarters point to the work point, and return, or from one work point to another."

Because of strike conditions at the Copper Plant in Perth Amboy the clerical position of P. Trischitta was abolished at close of business March 15, 1968. (Employees' Exhibit No. 2.) By early May, 1968, the strike condition no longer existed, however, Carrier did not restore the clerical position to the pre-strike level but, instead, used a junior furloughed employee on the New York District on the "abolished" clerical position 3 or 4 days per week commencing May 13, 1968.

B. Mattarachio) be paid two days' pay per week and 2 hours per day traveling time retroactive to May 13, 1968; (2) claim of Mrs. H. Cebula, senior to claimant in (1) above, for 1 day's pay plus 2 hours traveling time from May 13, 1968 and (3) Mrs. H. Cebula was denied attempt to displace Mrs. B. Mattarachio and payment of claim (2) would settle this portion of the claim.

The so-called initial claims were unsupported by facts, and, in carrier's opinion, are mere assertions, not a valid claim under the provisions of Rule 33.

The Supervisor Stations denied the District Chairman's claims under date of August 20, 1968 (Carrier's Exhibit C).

The General Chairman appealed this dispute to the Superintendent-Stations under date of September 3, 1968 (Carrier's Exhibit D) which was denied under date of November 1, 1968 (Carrier's Exhibit E).

The General Chairman appealed these claims to the then Chief of Personnel (now Director of Labor Relations and Personnel) under date of January 5, 1969 (Carrier's Exhibit F) alleging the Superintendent-Stations violated Rule 33 by failure to deny same within the sixty day time limit provision. After conference on the property, claim was denied by the Director of Labor Relations and Personnel under date of March 18, 1970 (Carrier's Exhibit G).

(Exhibits not reproduced.)

OPINION OF BOARD: The Statement of Claim in this dispute is in eight parts and involves at least three issues: (1) an allegation that an abolished position was not restored following a strike; (2) a claim for travel time under Arbitration Award 298; and, (3) counter and conflicting time limit allegations. Inasmuch as the genesis of the dispute is the issue of whether or not the clerical position at Perth Amboy, New Jersey, held prior to March 15, 1968 by Mr. Patrick M. Trischitta, was abolished under the standard 5-day normal notice of job abolishment provisions of Rule 19, or was abolished under the provisions of the 16-hour emergency force reduction provision, we shall deal with that matter first.

Under date of March 8, 1968, Mr. Patrick M. Trischitta received a notice that his job was abolished at the end of business, March 15, 1968. The notice made no mention of 16-hours' emergency notice, nor did it mention that the job was being discontinued because of a strike. The notice, in fact, gave more than five days' advance notice that Mr. Trischitta's position was abolished. On its face the notice appears to be a standard 5-day notice under the Rule and not an emergency force reduction notice, which type notice may set up a different sequence of events. Accordingly, we must hold that the abolishment was a normal abolishment under the 5-day notice provisions and not under the 16-hour emergency conditions provisions. The Petitioner argues that it was common knowledge that the position was abolished because of a strike. Had the Carrier resorted to the 16-hour notice provisions under Rule 19 — then this allegation may be valid. However, the evidence of record indicates otherwise.

Having found that the March 15, 1968 abolishment of Mr. Patrick M. Trischitta's position at Perth Amboy, New Jersey, was a normal 5-day abolishment, we hold that the remainder of the claim is moot. Inasmuch as the merits

of the other seven parts of the claim rest on the initial act, we will, therefore, deny 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 the Agreement was not violated.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.