



Award No. 19096

Docket No. CL-19079

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, 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-6860) that:

(a) Carrier violated the Clerks' Rules Agreement at Superintendent's Office at Buffalo, New York, when it reestablished and/or restored position of File Clerk at a lower rate than the established rate.

(b) Carrier shall now be required to pay Mrs. M. J. Henshaw difference in rate of pay she received of (\$494.79) per month and (\$560.74) per month which is the proper and established rate of this position.

(c) This difference in rate of pay is for the period May 13, 1968, up to and including March 28, 1969, when this position was abolished. (Carrier has paid Mrs. M. J. Henshaw the difference in rate of pay for period January 22, 1968 up to and including May 10, 1968.)

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, which Agreement is on file with the Board and by reference thereto is made a part of this statement of facts.

The following Employee Exhibits are also, by reference, made a part of this Statement of Facts.

EMPLOYEES EXHIBIT NO. 1—Letter dated February 12, 1968, from Mr. A. Mc. Kenzie, Local Chairman to Mr. John Mc. Neill, Trainmaster, submitting claim for Mrs. M. J. Henshaw.

EMPLOYEES EXHIBIT NO. 2—Letter dated February 15, 1968, from Mr. A. W. Campbell, Superintendent to Mr. A. Mc. Kenzie, Local Chairman, answering and denying claim submitted by Mr. Mc. Kenzie, Local Chairman to Mr. Mc. Neill, Trainmaster.

day was assigned some file work, opening and closing mail, and making copies of reports on a copying machine.

None of the aforementioned duties are such that require a higher rate of pay.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Organization did not comply with the provisions of Rule 33 (adopted from the National Agreement of August 21, 1954) in that the employees failed to progress the controversy to the

Board within nine months from the date of the decision of the Carrier's highest designated officer to handle claims or grievances. The letter of notice of intention to file ex parte submission from the Organization bears a date fourteen months later than the date of denial by Carrier's highest designated officer.

Since the Organization did not meet the requirements of the time limit rule nor prove that the Carrier waived the application of such rule we conclude that the claim is out of time and must be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 is dismissed in keeping with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.