

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19541  
Docket Number CL-19429

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
(  
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6964)  
that:

(a) Carrier violated the Agreement between the parties when, by bulletin dated December 11, 1969, it reduced the regularly assigned position of Janitor, Buffalo, New York, from five (5) days per week to three (3) days per week; and,

(b) Carrier further violated the Agreement when, by bulletin dated December 11, 1969, it created an unauthorized position of Janitor bulletined to work three (3) days per week at Buffalo, New York (Monday-Wednesday-Friday) and two (2) days per week (Tuesday-Thursday) at Suspension Bridge, New York, some thirty (30) miles distant from Buffalo, which position was not a relief assignment; and,

(c) As result of said violations Carrier shall now be required to compensate Mr. F. J. Kosciszewski, his successor or successors, for the difference between the part-time position of Janitor at Buffalo and the former full time position of Janitor at Buffalo each week, commencing December 11, 1969, and continuing each week thereafter until the Janitor position at Buffalo is properly bulletined and assigned; and,

(d) Carrier shall also restore all rights which Employee F. J. Kociszewski, C. R. Veguillas or successor(s), may have been wrongfully deprived of as result of the unauthorized establishment of position of Janitor as shown in Advertisement No. 3255 dated December 11, 1969.

OPINION OF BOARD: Prior to December 11, 1969, a janitor position was maintained by Carrier at Buffalo, assigned to work at Tifft Terminal and Dingens Street, which was a 5-day regular position. Under date of December 11, 1969, Carrier advertised a position of Janitor to work 3 days per week at Buffalo and 2 days at Suspension Bridge, a point the Organization claims is 30 miles from Buffalo.

It is the Organization's contention that the Bulletin is an unauthorized and illegal attempt to create two part time positions. It also claims that it violated the Agreement, particularly Rule 21 thereof. The position the Organization further maintains is not a regularly assigned relief position.

Carrier raises two procedural issues which it contends should bar the claim. However, we find that Carrier abandoned its contention that Rule 33 was not complied with when the Organization failed to submit the claim to the proper Carrier officer. Furthermore, there was no material variation in the claim as it was handled on the property and Carrier was not misled by the slight variation. Thus we will proceed to a determination on the merits.

We find that the Organization has failed to prove that Carrier violated the Agreement when it bulletined the assignment as it did. Tift Terminal and Suspension Bridge are both within the Buffalo Seniority District, on which claimant holds seniority and Carrier adhered to the Agreement in bulletining the assignment. We do not agree with the Organization's contention that Rule 21 was violated because the assignment in question did not have the same point for beginning and ending the tour of duty every day. The Organization, we feel has misinterpreted Rule 21. It is not the function of this Board to adjudicate disputes on the basis of equity, fairness or hardship. We are restricted to the interpretation and application of collective bargaining agreements. We do not believe that the Agreement in question was violated. To hold otherwise, we would be rewriting Rule 21. Such is beyond the jurisdiction of this Board.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.