

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19575
Docket Number CL-19583

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and **Steamship Clerks,**
(**Freight Handlers**, Express and Station **Employees**

PARTIES TO DISPUTE: (

(J. F. Nash and R. C. Haldeman, Trustees of the **Property**
(of Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-7023**)
that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as **revised**, when it abolished position of Clerk-Stenographer **at** Buffalo, New York, and **then** re-advertised the **same** position as a **new** position at a **lower** rate of pay than the **established** rate.

(b) Carrier shall now be required to restore the established rate of this position, plus subsequent wage increases.

(c) Carrier shall now be required to pay **Sylvia M. Wheeler**, the proper rate of this position from July 10, 1970, up to and including **such** time as this violation **is** corrected.

OPINION OF BOARD: The position of clerk-stenographer, held by an employee about to retire, was abolished by notice dated July 1, 1970; That position paid \$692.22. A new position of clerk-stenographer **was** advertised on July 3, 1970 and **awarded** to Claimant by Assignment dated July 10, 1970. That position paid \$574.10 **per** month. Although the descriptions of the two positions were virtually identical, **the** Carrier maintained that the abolishment was due to "**elimination** of **all** chief clerk work on this assignment". The Carrier claimed **that** the original **incumbent** had supervisory responsibilities which accounted for the higher rate of pay.

Rule 56 of the Agreement states:

"**Rule 56 Adjustment** of Rates: **When** there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, **the compensation** for such position will be subject to adjustment by **mutual agreement** with the duly accredited representative, but established positions will not be discontinued and new **ones** created under the **same** or different titles covering relatively the same class **or grade** of work, which will have **the** effect of reducing the rate of pay or evading the application of these rules."

The **record** in this **case** does not sustain the claim that there **were** substantial differences in the two positions. Even if there were occasional **supervisory** responsibilities, we have said in a very similar case (Award 6870) "This Board has long been **committed** to the rule that it is not necessary for an **employee** to take **over** and perform **all** of the duties and responsibilities of a higher rated **position** in order to be entitled to pay at the higher-rate." **In any event** Carrier did not **abide** with the requirements of Rule 56; Carrier did not seek mutual agreement in order to modify the compensation of the position.

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 violated.

A W A R D

Claim **sustained**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Kilham
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.