

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 19641  
Docket Number CL-19587

Irwin M. **Lieberman**, Referee

(Brotherhood of Railway. Airline and Steamship Clerks,  
**(Freight** Handlers. **Express** and Station **Employees**  
PARTIES TO DISPUTE: (  
(**J. F. Nosh** 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-7024)  
that:

(a) Carrier violated the Agreement between the parties effective  
May **1**, 1955, as revised when it piece **mealed** out the duties **and/or** work of  
positions first and **middle trick Lead** Clerk-Crew Dispatcher at **Hazleton**, Pa.

(b) Carrier due to its actions was able to abolish the first trick  
Lead Clerk-Crew Dispatcher **at** this point.

(c) Carrier shall now be required to **pay** Mr. E. **Mulreaney**, an  
additional days **pay** at punitive rate due **to this violation** that forced Mr.  
E. **Mulreaney** to lose his regular assignment as first trick **Lead** Clerk-Crew  
Dispatcher and be assigned to the middle trick position of Lead Clerk-Crew  
Dispatcher from July 1, 1970, up to and including such **time** as this violation  
is corrected.

(d) Carrier shall now be required to **pay** Mr. **D. Rosrty**, who held  
middle trick at this point that was abolished due **to** carrier's violations a  
days **pay** for each and every **working** day **from** July **1**, 1970, until such time  
as this violation is corrected.

(e) Carrier shall be required to restore this position first trick  
Lead **Clerk-Crew** Dispatcher, **and restore** all the work **and/or** duties of these  
positions that **were** piece **mealed** out to **employees** not covered under the Agree-  
ment and also the work **and/or duties** piece **mealed** out to other districts and  
work and/or duties being performed by Supervisors **and/or** other official posi-  
tions.

(f) Carrier **having** violated Rule 33, Time Limits, this claim must  
be allowed.

OPINION OF BOARD: This claim involves, **principally**, the abolition of **a** first trick position and the re-establishment of the position on the middle trick. There **are** two Claimants.

Both Parties **raise contentions** of violations of Rule 33 - by the other side. The Orgsnizstion insists that the Carrier violated the time limit **provisions of** the Rule and the Carrier argues that the claim was not handled in the "usual" **manner** on the property and also raises a time Limit point. With respect to both **arguments**, after careful research, we can only conclude that the record is in hopeless conflict. Also, we find that neither side has submitted sufficient evidence to support its procedural position. Therefore we will move to the merits.

The record on the substantive issues is not unlike the record on the procedural arguments; the record shows considerable allegation, **argument** and counter-argument but little or no probative evidence. The Orgsnizstion has listed nineteen Rules (**and** "related rules") as being violated. However; no evidence has been supplied **indicating** how or when these rules **were** violated,

This Board **has** Long been dedicated to the proposition **that** the **initiating** party must support **its** claim by competent evidence. It is **well** established in a long line of **awards that** the burden of proof is upon the Petitioner. (See for example 15535, 16675 and 18040). Petitioner has offered insufficient evidence in this record to support its **contentions** of an alleged 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 **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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 27th **day** of February 1973.