

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19782
Docket Number CL-19782

C. Robert Roadley, 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 the Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-7103**)
that:

1. Carrier violated the Agreement between the parties effective May 1, 1955, as revised, when effective with the close of business August 31, 1970, it abolished position of Rate Clerk, held by Mr. Edward **F.** Wiedl the highest rated of **two** (2) clerical positions in this office and added some of the duties of this higher rated position to the position of Mrs. Mary Grover, Clerk-Stenographer in this office a lower rated position, and failed to allow Mrs. Mary Grover, the higher rate of pay.

2. Carrier further violated said Agreement when due to only one (1) position, position of Clerk-Stenographer, held by Mrs. Mary Grover, remaining in this office under the full coverage of the Clerks Agreement and was unable to absorb all the duties of higher-rated abolished position, the Carrier piece **mealed out** various duties of this abolished position to "**P**" Positions and other positions excepted from the Agreement.

3. Carrier again violated said Agreement when Mr. **J. C. Mc Govern**, Freight Traffic Manager, failed to **reply** to latter **dated** January 20, 1971 from Local Chairman Mendyke, appealing decision of Mr. George Henry, Asst. Freight Traffic Manager thus violating Rule 33, Time Limits.

4. Carrier shall now be required to allow claim as presented for stated violation under Rule 33, Time Limits.

5. Carrier shall also be required to restore the work piece **mealed** out to "**P**" Positions and other positions excepted from the Agreement to position fully covered under the Agreement between the parties effective May 1, 1955, as revised, position held by Mrs. Mary Grover. If restoration of this work is such that Mrs. Mary Grover can not absorb or perform same, then position of **E. Wiedl** abolished should be restored.

OPINION OF BOARD: On August 31, 1970, the position of Rate Clerk, in the Carrier's Traffic Department at Buffalo, New York was abolished after the work of quoting rates had been discontinued from **that** position. There were only two positions, fully covered by the provisions of the Agreement between the parties, located in that office. The position of Rate Clerk was the higher rated of the **two** positions. On September 27, 1970, the Local Chairman filed a claim in behalf of claimant, occupant of the remaining position, on the basis that **the** work of the abolished higher rated position had been transferred to the remaining lower rated position. Claim is for the difference in the rate of Claimant's position and the former rate of the abolished Rate Clerk position.

The claim, as submitted to Carrier, is quoted below:

"I have a claim **from** Mary Grover, claiming the difference in rate of her position and the rate that was formerly on position of Mr. Edward Wiedel, from September 1, 1970, and until this situation is corrected.

Due to the fact that although Mr. **Wiedel's** position was abolished on August 31, 1970, when he retired, the only change in the duties of this former assignment was the abolishment of the quoting of rates, and the rest of this assignment is being performed by Mary Grover.

As Mary Grover is performing duties which were formerly on a higher rated position, she is entitled to the higher rate.

You cannot take work from a higher rated **position** and give it to a lower rated position without paying the higher rate.

Mrs. Mary Grover is entitled to claim as presented."

The subject claim was denied by Carrier on November 24, 1970 on the grounds that it was too vague for consideration. The Local Chairman, under date of January 20, 1971, notified the appropriate Carrier officer that said denial was being appealed. On April 16, 1971, the Local Chairman wrote to the Carrier advising that no reply to the January 20, 1971 letter had been received and that, therefore, the claim must be allowed on the grounds that the Carrier violated Rule 33 of the Agreement by not responding in writing within the 60 day limitations as provided in said Rule. On April 22, 1971, the Carrier replied to the April 16, 1971 letter which stated, in pertinent part:

"As you are aware, your letter dated January 20, 1971, addressed to me, could not be acknowledged as I was hospitalized on December 30th. with a heart attack and have only returned to my office."

The Petitioner has based his primary position for a sustaining award on the alleged violation of Rule 33 (Time Limits). The Carrier defends on the basis of a violation of Rule 33 in that the claim was too vague for consideration, and on the Merits. Additionally, Carrier argues in its submission, that the claim, as presented to this Board, is an expanded claim insofar as claim 2 is concerned (that part of the duties of the abolished position were piece **mealed** out to excepted positions) and claim 5 (restoration of the work that is alleged to have been piece **mealed** out).

The record before is clear that claims 2 and 5 were not handled on the property and are, therefore, not properly before us. Claims 2 and 5 will be dismissed. However, the record is also abundantly clear that there is no substantive variance in claims 1, 3, and 4 as presented to the Carrier and to this Board.

Award 10420 stated, in part:

"The mere dismissal of part of a claim does not invalidate it entirely."

Also see Awards 9343, 7030, 19573.

After a careful review of the record of handling on the property and the partisan submissions we find that the Carrier erred when it did **not respond** to the Organization's notification of appeal within the limitations **prescribed** in Rule 33 of the Agreement. This fact is indirectly admitted by Carrier in its letter of April 22, 1971, previously quoted herein. While we are sympathetic with the reasons set forth by Carrier for its untimely response to the Local Chairman the fact remains that both parties to the Agreement have an equal obligation to comply with the provisions thereof unless those obligations are waived by agreement between the parties.

Award 19361 stated:

"Even if we are to accept as fact Carrier's contention that the March 8, 1969 letter is too vague and indefinite to meet the requirements of a claim or grievance under the provisions of Article V of the August 21, 1954 Agreement, Carrier is not relieved of its obligation to make a timely denial as required by the Agreement."

Award 12472 stated:

"**** The rules, as exemplified in Article V, requires the Carrier to respond within 60 days from the date the claim or grievance is filed by notifying the Claimant or his **representative** in writing, the reasons for the disallowance of such claim or grievance. This requirement is mandatory, not a matter of choice, or dependent upon the type or quality of the claim. ****"

Also see Awards 14603, 16564, and 3637 (Second Division).

In view of the foregoing, we will sustain claim 3 and 4 to the extent that claimant be paid the difference between her position and the rate of the higher rated position in question for the period September 27, 1970 to April 22, 1971, the date of Carrier's late denial. See National Disputes **Committee** Decision 16, Third Division Docket CL-12336.

As to the merits of the dispute the Petitioner alleges that Carrier when the position of Rate Clerk was abolished, assigned the duties of that **posi-**tion to the lower rated position held by claimant without proper compensation. On the other hand, Carrier asserts that the claimant did not perform work of the abolished position. In its submission to this Board the Carrier stated, in part: "***** nowhere has there been any evidence produced that claimant was performing any work of the abolished position; the only data in this connection is an allegation that 'the rest of the assignment is being performed by Mary Grover' and 'As Mary Grover is performing duties which were formerly on a higher rated position, she is entitled to the higher rate.'"

A thorough review of the record **fails** to show that Petitioner offered any proof that claimant was, in fact, performing the **duties** of the abolished position in question, nor was any evidence presented as to the specific work involved. Petitioner merely made an unsupported allegation. Therefore, we must hold that the alleged violation of the Scope Rule is not supported by any evidence whatsoever and we will 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 violated only to the extent indicated in the
Opinion.

A W A R D

Claim 1 denied;

Claim 2 dismissed;

Claim 3 sustained;

Claim 4 sustained for the period September 27, 1970 to April 22,
1971;

Claim 5 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.