

**Award No. 1199**

**Docket No. CL-1240**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**LEHIGH VALLEY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood for restoration of Raymond Stewart, Clerk Typist, to his position in Freight Claim Office, Philadelphia, Pa., and payment of all wage losses suffered retroactive to February 1, 1939."

**EMPLOYEES' STATEMENT OF FACTS:** "On November 1, 1938, Raymond Stewart attempted to exercise displacement rights to position of Clerk-Dictaphone Operator, rate of pay \$105.00 per month, in Freight Claim Department, Lehigh Valley Railroad.

"This move was made necessary by reason of his having been displaced by another clerk account of a number of positions having been abolished.

"The Freight Claim Agent denied Mr. Stewart's request on the basis that the occupant of the position had begun service as a Clerk, whereas Stewart, although senior in service, had begun as Office Boy.

"Upon handling this case with General Manager over a period of three weeks Mr. Stewart was awarded the position with back pay.

"The position consisted of dictaphone transcribing during each morning and clerical work each afternoon and after six weeks of work on this combination position Mr. Stewart was disqualified February 1, 1939.

"The rate of \$105.00 per month for this position was established as a beginners rate or learners rate. The other two Dictaphone Operators in the Department being rated at \$125.00 per month, and both received an additional \$15.00 per month for meritorious work, making their compensation \$140.00 per month.

"The position Mr. Stewart formerly occupied was that of Clerk-Typist and his work had been completely satisfactory. He had 20 years experience in the one department and was completely familiar with the work, no complaint ever having been made in all these years against his work.

"The sole basis of disqualification as presented by the management was the number of lines typed during the morning period of work dictaphone transcribing—'A comparison of Stewart's record being made with that of previous occupant for a comparable period.'

"The former occupant of the position in dispute performed dictaphone work on an equal basis of that of other two operators. A comparison of Stewart's work with that of the former operator shows former operator on dictaphone transcribed a total of 15½ days with 63 cylinders and 290 letters work, and was permitted to work 30½ hours on copy work on which twice as many lines can be produced as in transcribing from cylinders.

with his seniority rights unimpaired and entitled to bid for any position bulletined which he was competent to fill and to which his seniority rights would entitle him. (Exhibit 1) When petitioner was disqualified, he automatically reverted to the extra list, as provided by Rule 18, where he still remains. Since petitioner's disqualification, he has been treated as a furloughed employe and copies of bulletined positions have been mailed to him. Exhibits 1, 2, 2 D, 2 E, 2 F) However, petitioner failed to bid on any of the bulletined positions, although the duties of one of them are identical with those of the position from which he was disqualified. (Exhibit 2-F)

"The petitioner was neither disciplined nor dismissed from the service, and, therefore, Rule 24 of the agreement has no application to the case. In the discussion of the case with the carrier's General Manager, in August, 1939, the General Manager erroneously assumed that petitioner had been dismissed for cause. That was not the fact, however, as the conduct of the carrier toward petitioner since his disqualification clearly shows. He has been treated in all respects as a furloughed employe on the extra list and nothing that the carrier has done can be construed as inconsistent with that status. There was no occasion for a hearing prior to petitioner's disqualification. Rule 24 (a) provides for such a hearing when the question of discipline or dismissal is involved, but as there was no such question here, the section is entirely inapplicable. There is no requirement for a hearing before disqualification in Rule 18. Therefore, in disqualifying petitioner, after he had amply demonstrated his unfitness for the work, the carrier violated no rights conferred on petitioner by the agreement. The hearings granted by the carrier to the General Chairman, in August, 1939, several months after disqualification, were a concession by the carrier to which petitioner was not entitled under the agreement, since this was a proceeding under Rule 18, which gives no right to a hearing. The fact that no appeal was filed by the petitioner within ten days, as required by Rule 24 (b), is evidence that at that time petitioner was aware of the fact that he had been neither disciplined nor dismissed and that Rule 24 did not apply to his case. Even if Rule 24 did apply, the petitioner, by his failure to observe it himself, is estopped from invoking it against the carrier.

"The carrier has the responsibility of determining the fitness and ability of its employes, and where it acts in good faith, and without bias and prejudice and shows no intention to disregard the rules, either in letter or in spirit, its judgment should be final.

"In conclusion, the carrier respectfully submits that the evidence fails to substantiate petitioner's claim that he was discriminated against and unfairly treated and that his rights under the agreement of April 1st, 1935, were violated. On the contrary, the carrier asserts that the evidence establishes beyond a doubt that the petitioner's rights under the agreement were fully respected; that the treatment of petitioner by the carrier in all respects was fair and reasonable and that the sole ground for his disqualification was his plainly demonstrated unfitness for the position. The carrier, therefore, requests your Honorable Board to deny this claim as unsupported by the evidence."

**OPINION OF BOARD:** Based upon all of the facts and circumstances of this particular case, the Board is not disposed to disturb the action of the carrier.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 action of the carrier will not be disturbed.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1940.