

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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.

1. The Carrier violates the Memorandum of Agreement of July 26, 1938 when it issued instructions restricting the use of passes of twelve (12) employes of the Accounting Bureau at Bethlehem, Pa., over week ends and holidays.

2. That the restriction be lifted and employes reimbursed for the amount expended in the purchase of half-rate tickets.

EMPLOYES' STATEMENT OF FACTS: Prior to July 26, 1938, the Carrier maintained District Accounting Offices at Jersey City, N. J., Easton, Pa., Sayre, Pa., Wilkes Barre, Pa. and Buffalo, N. Y., and a General Accounts Bureau at Philadelphia, Pa., the total number of positions in these offices was 131 and on July 26, 1938, the Carrier and the Committee entered into a Memorandum of Agreement (Employes' Exhibit "A") transferring and consolidating the work from the above offices to the Carrier's General Operating Offices at Bethlehem, Pa., in this consolidating fifteen (15) positions were abolished, making a total of 116 positions when the offices were opened at Bethlehem, Pa.

On Sept. 4, 1942, the following notice was posted on the bulletin board in the Accounting Bureau:

"August 28, 1942.

Restrictions in use of trip and annual passes, etc. is interpreted to permit employes who commute each day filling necessary assignments during restricted periods, to use free transportation.

Employes who live away from assignment for own convenience with living accommodations at point of assignment, which they utilize except over holidays and week ends, will not be permitted to use transportation during restricted periods.

(s) F. R. Gerard
Vice President and Genl. Manager"

The twelve (12) employes were advised that the second paragraph applied to them and in discussing the case with Mr. Gerard, Vice President and General Manager was informed that arrangements would be made for these employes to purchase half-rate tickets.

months after the war, and it was not until August 28, 1942, when war conditions made it imperative, that we were compelled to restrict the passes of all employes on week-ends and holidays.

When the agreement of July 26, 1938 was made with respect to permitting employes to make up the time during the week and have Saturday off duty, it was expected that the employes in due time would move to the place where they worked, and the majority have done so, and while we continue to relieve them from working on Saturday if they so desire, war conditions make it impractical to permit them to use their passes on week-ends and holidays.

We have had the full cooperation of all employes in the limiting of the use of passes during the war, and an exception in the case of these men is not justified. There has been no violation of the agreement and, certainly, the compliance with the circular letter quoted above cannot be considered other than a reasonable contribution by these employes in the war effort. Therefore, we ask that the claim be denied.

OPINION OF BOARD: The record in this case contains recognition by both parties of existence of an Agreement dated July 26, 1938, relating to a consolidation of Accounting forces, whose intent is given in the respondent's advice that for four years after the consolidation passes for the few employes who did not move to the location of their work were honored on the Carrier's trains, permitting their use on week-ends and holidays. Further, the record evidences recognition by both parties that the Memorandum of Agreement of July 26, 1938, is still effective.

The restrictions upon use of passes enforced by the Carrier in its instructions August 28, 1942, cannot have the effect of destroying the provisions of the Memorandum of Agreement.

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 employes involved in this dispute are respectively carrier and employes 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 restrictions upon use of passes enforced by the Carrier in its instructions August 28, 1942, cannot have the effect of destroying the provisions of the Memorandum of Agreement entered into between the parties, dated July 26, 1938.

AWARD

Claims 1 and 2 sustained in accord with above Opinion and Findings for those employes whose circumstances in respect to residences and use of passes come within the provisions of the Memorandum of Agreement dated July 26, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1943.