

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

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 that the Carrier violated and continues to violate the Clerks' Agreement.

1. When it discontinued the position of Statistician, General Manager's Office, Bethlehem, Pa., rate \$234.60, on February 20, 1942, and turned the duties of the position over to Mr. R. E. Gaugh, Chief Statistician, newly created Excepted position, and two newly created positions of Clerk-Stenographers, held by Mr. McNally and Mr. Johnke.

2. That Mr. J. P. Dreisbach, the occupant of the position when it was discontinued, and all other employees affected, be compensated for any wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: The position of statistician has been established in the General Manager's offices at Bethlehem for over twenty-five (25) years. All the duties of the position remain and the duties turned over to Mr. Gaugh are shown on Employees' Exhibit "A," and the duties turned over to the newly created positions of Clerk-Stenographers held by McNally and Johnke are shown on Employees' Exhibit "B."

Mr. Gaugh entered the service of the Lehigh Valley Railroad Co. in the year 1938 as Assistant to Mr. Williams, the new President of the railroad, and this being an official position, he does not have a seniority date on the clerical roster. When Mr. Williams resigned to accept the presidency of the Western Union Telegraph Co., Mr. Gaugh's position of Assistant to the President of the Lehigh Valley Railroad Co. was abolished. The newly created position of Chief Statistician was for the purpose of providing a position for Mr. Gaugh, and was accomplished by discontinuing the established position of Statistician held by Mr. Dreisbach.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing the effective date of March 1, 1939, from which the following rules are quoted:

Rule 1—Scope—"These rules shall govern the hours of service and working conditions of all the following employees, subject to the exceptions noted:"

This rule was violated when the Carrier turned the work of an established position over to the occupant of an excepted position.

Rule 2 (a). "Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, reports, state-

previously. Effective September 1st, 1941, the position of Assistant General Manager was abolished, and Mr. Carey became Chief Clerk to the General Manager, and the classification of Mr. Dreisbach was changed from Clerk to Statistician at same rate of pay. Effective February 20, 1942, Mr. Carey, at his own request, gave up the position of Chief Clerk to the General Manager, and he was returned to the position he occupied previous to December 1, 1940, with the classification of Accountant instead of Statistician, but at the same rate, plus the Mediation award. At the same time, the position of Statistician held by Mr. Dreisbach was abolished, there being no necessity for that position upon the establishment of the Accountant position.

POSITION OF CARRIER: The statement of the employees that the duties of Mr. Dreisbach's position were turned over to Mr. R. E. Gaugh, Chief Statistician, newly created excepted position, is without any basis in fact, Mr. Gaugh's duties being entirely of a supervisory nature and carrying the title of Assistant to the General Manager until it was changed to that of Chief Statistician without any change in the duties; and the facts are that the establishment of the Accountant position and the placing of Mr. Carey in that position took over practically all the work performed by Mr. Dreisbach and additional duties besides.

Further, the statement by the Clerks that the duties performed by Mr. Dreisbach were taken over by two newly created positions of Clerk-Stenographer is without basis in fact, as Mr. McNally performs no duties whatever previously performed by Mr. Dreisbach, and one item which Mr. Johnke is handling now, that is, personal expense record cards, requires about one hour's work per month.

The facts are that the establishing of the position of Accountant, which was awarded to Mr. Carey, made it unnecessary to continue the position held by Mr. Carey, as Mr. Carey had had greater experience and capacity than Mr. Dreisbach and he, therefore, could do all of the work being done by Mr. Dreisbach and more. Therefore, there was no violation of the Clerks' Agreement in establishing the new position of Accountant at a higher rate, and discontinuing the position of Statistician at a lower rate. The claim, therefore, should be denied.

OPINION OF BOARD: On February 11, 1942, the Carrier discontinued the position of Statistician in the General Manager's office. It is contended that the Carrier then arbitrarily removed some of the work of the position from the scope of the current agreement by assigning it to a newly created excepted position. It is also contended that the agreement was further violated by the Carrier in assigning some of the work to two newly created clerk-stenographer positions at lower rates of pay.

It is not disputed that the discontinued position of Statistician was within the scope of the Clerks' Agreement and held by Clerk J. P. Dreisbach at the time of its discontinuance. It is claimed that the duties of this position were assigned to R. E. Gaugh who held a newly created excepted position designated as Chief Statistician and to employees McNally and Johnke who were assigned to two newly created clerk-stenographer positions within the scope of the Clerks' Agreement.

It is the contention of the Carrier that on February 20, 1942, W. L. Carey voluntarily relinquished his position of Chief Clerk to the General Manager and was returned to the position held by Dreisbach under the classification of Accountant instead of Statistician, a position which he had formerly held and which he was fully qualified to hold. The position of Statistician was thereupon abolished, all the duties of the position having been assigned to the newly created Accountant's position. That Carey had the right to displace Dreisbach by virtue of his seniority is not questioned. The issue is whether the Carrier assigned some of the duties of the abolished position to others not covered by the Clerks' Agreement.

The record is quite conclusive that Clerk McNally performed none of the duties of the abolished position and that Clerk Johnke performed work formerly done by Dreisbach requiring about one hour's time each month. In view of the fact that Johnke's position was within the scope of the Clerks' Agreement also, we fail to see where the Organization has a justifiable complaint as to the assignment of this work to Clerk Johnke.

The primary question is whether any of the duties assigned to Dreisbach as Statistician were, after the discontinuance of that position, assigned to Gaugh, who was filling an excepted position. We are in accord with the argument advanced by the Organization that the Carrier may not properly abolish a position within the agreement and create a new excepted position from the work of the abolished position. Such action constitutes a removal of work from the scope of the agreement and would constitute, if established, a violation of the agreement.

The Carrier contends that Gaugh's position as Chief Statistician resulted from a change of names from Assistant to the General Manager to Chief Statistician without any change in the duties to be performed by the latter. It is asserted by the Carrier that Gaugh's duties requires him to analyze expenses, estimate costs, supervise budgetary accounting and appropriation handling for all operating departments and divisions, and other duties not necessary to mention here. It is contended that this work is necessary to the performance of his official duties in connection with the management of the railroad. These statements are denied by the Clerks' Organization but the supporting evidence consists largely of conclusions and assertions with little probative value. There is no place in the record where it is shown Gaugh does any one thing previously performed by Dreisbach. In fact, it appears that all of Dreisbach's work has been done by Carey with the exception of the small amount of work done by Johnke. That Gaugh does work which is statistical in nature is conceded. That he has done work formerly performed by Dreisbach and within the scope of the Clerks' Agreement has not been adequately shown. The burden is, of course, on the claimant to show its right to the relief asked. There is little difference, if any, in the positions assumed by the parties as to the applicable rules. The issue is primarily one of fact. After a consideration of the whole record, we are of the opinion that an affirmative award cannot be sustained. The burden cast upon the claimant to show his right to an award has not been met.

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 Employee involved in this dispute are respectively Carrier and Employee 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 there was no violation of the applicable rules by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1943.