

Award No. 2353

Docket No. CL-2321

**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 the Clerks' Agreement.

1. When it discontinued the position of Fuel Clerk at Bethlehem, Pa., held by Mr. W. E. Derr on August 22, 1942, rate of pay \$270.00 per month and turned the duties of the position over to Mr. H. W. Walter, Supt. of Transportation, and Mr. F. W. Lees, his Chief Clerk, an excepted position.

2. That the position of Fuel Clerk be restored and Mr. W. E. Derr and all other employees affected be compensated for any wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: The position of Fuel Clerk has been established in the Bethlehem Office for many years and effective December 1, 1939, a re-organization of the Fuel Desk in the General Manager's office was effected, some of the reports had been discontinued and in some instances there was duplication of work with the Fuel Desk in the Auditor of Disbursements' office. As a result, the clerical position held by Mr. J. B. McNamee was discontinued and Mr. Derr continued to perform the clerical work necessary in the distribution of fuel. New duties were added to his position involving the assignment of engines to different points on the system as the business conditions required it. This work was formerly done at the division points.

Employees' Exhibit A is herewith submitted to show that work of assigning engines and condition of the engines at various points on the system was clerical work that properly comes within the scope of the Clerks' Agreement.

POSITION OF EMPLOYEES: The employees contend that the action of the Carrier, in piece-mealing the work of the position to the Supt. of Transportation and his Chief Clerk, to the Transportation Clerks on all three tracks, receiving a lesser rate of pay, \$215.10 per month, and Clerk-Stenographer position, newly created, rate \$170.00 per month, was done for the purpose of discontinuing the position and that the position, once established with the rate of pay \$270.00 per month, could not be discontinued while the work remained without conference with the Committee. No such conference was held.

There is in effect an agreement between the parties 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.

Chairman for Protective Committee, Mr. Schuler, and by the General Chairman of the Brotherhood of Railway and Steamship Clerks, Mr. Buckley, was with respect to the abolishment of the position of Power Distributor on August 22, 1942. We must, therefore, conclude that the case now presented to the Board refers to the abolishment of the position of Power Distributor. If this is not correct, then the case is not properly before the Board.

The facts are that in November 1940 it was decided that the distribution of power, which was handled by the Supt. Transportation, Supt. Motive Power and Division Superintendents, should be concentrated in the General Manager's office, and Mr. Derr was appointed to the position. The new plan worked out fairly satisfactorily during the light business of the depression, but, with the increasing business on account of the war, the centralized control proved cumbersome and inefficient to meet the extraordinary transportation conditions, and the new plan was discontinued and the method of handling power previous to the establishment of the position of Power Distributor, was placed on the same basis as had been in effect for many years; and there being no work in this position, it was abolished and Mr. Derr permitted to take another position in accordance with his seniority rights.

POSITION OF CARRIER: The claim of the employes that the duties of the position were turned over to the Supt. Transportation and his Chief Clerk has no basis in fact whatever. The centralized control naturally required a great deal of clerical work and a large amount of telephoning to procure the details each day, and it was of such volume that Mr. Derr occupied his time completely on the work and found it necessary to work overtime. It can be understood, therefore, if the clerical work had been turned over to the Supt. Transportation and his Chief Clerk, they would be very busy men. The facts are that practically all of the clerical work involved in the centralized control position was eliminated when the plan was changed and return was made to the plan in effect previously for many years. The small amount of clerical work which was necessary with the old plan was taken care of by the Assistant Chief Clerk in the office of Supt. Motive Power, which he took on in addition to his other duties. Here it should be understood that the position of Power Distributor and the position of Assistant Chief Clerk in the office of the Supt. Motive Power had exactly the same status and came under the agreement of the Clerks, the rate of the Power Distributor being \$270.00 a month, and the rate of the Assistant Chief Clerk \$275.00, so there can be no question of transferring work from a higher rated position to a lower rated position, or of transferring clerical work to an excepted position.

As is, no doubt, well understood by the Board, the handling of power on a railroad is an administrative matter, and the General Manager, Supt. Transportation, Supt. of Motive Power, Asst. Supt. of Motive Power, and Division Superintendents take part in the handling of the matter.

It must be conceded that we had the right to put in a new plan of distributing power and, of course, as it made a position coming under the Clerks' Agreement, this was not objected to by the Clerks; and for the same reason, it must be conceded that when the new plan did not work out satisfactorily on account of the changed conditions due to the war, we had the right to return to the former plan of distributing power, and when the change eliminated practically all the work covered by the position, we had the right to abolish it. The fact that a very small portion of the work was transferred to a higher rated position coming under the Clerks' Agreement provides no basis for a complaint from the Clerks.

In view of the fact that there is no basis for this claim and no violation of the Clerks' Agreement, we respectfully ask that the claim be denied.

OPINION OF BOARD: On August 22, 1942, the Carrier discontinued the position of Power Distributor W. E. Derr at Bethlehem, Pa., a position within the scope of the Clerks' Agreement. The Clerks' Organization alleges that the duties of the position were assigned to H. W. Walter, Superintendent of Transportation, and F. W. Lees, his Chief Clerk, positions excepted from

the Clerks' Agreement. Such a disposition of work would, if established, amount to a taking of work from the scope of the Clerks' Agreement and constitute a violation of that agreement. The issue is largely a question of fact, the final decision resting on the question whether work performed by Derr was assigned to the above noted excepted positions after Derr's position was discontinued.

The Carrier states that in November 1940, it was decided that the distribution of power should be taken from the Superintendent of Transportation, the Superintendent of Motive Power and the Division Superintendent, and concentrated in the General Manager's Office. This was done and the position of Power Distributor thus created was given to Derr. It is this position which the Carrier abolished. On August 22, 1942, the Carrier deemed it necessary to restore the distribution of motive power to its former status, which was done, and the position of Power Distributor abolished. Derr thereupon took another position to which he was entitled by virtue of his seniority.

It is shown that practically all the clerical positions under the centralized plan were discontinued when the plan was abandoned. What little work remained was assigned to the Assistant Chief Clerk to the Superintendent of Motive Power which like that of Power Distributor also came under the Clerks' Agreement. The record points out no specific work performed by the transportation clerks on the newly created Clerk-Stenographer position which had previously been performed by Derr. The alleged violation as to them falls for want of proof. Whether any work was taken from under the Clerks' Agreement depends entirely on whether the Superintendent of Transportation or his Chief Clerk performed any of Derr's duties as Power Distributor after that position was abolished.

The Carrier in the exercise of its managerial prerogative could change its plan for assigning its motive power. And in so doing, it could properly discontinue any position which had no duties remaining to be performed. And we think also that the Carrier could properly assign additional duties to others within the Clerks' Agreement. It may not, however, assign work within the scope of the agreement to employees in excepted positions. It is clear from the record, in applying these rules to the case before us, that the Carrier did not violate its contract with the Clerks. It is not pointed out by the Organization where an excepted employee is doing any specific work that Derr was doing when in the position of Power Distributor. General assertions unsupported by facts are not sufficient to sustain an affirmative award.

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 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 record is not sufficient to sustain an affirmative award, no violation of the Clerks' Agreement being shown.

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.