

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 assigned clerical work, hereinafter stipulated, to employes not covered by the Clerks' Agreement, and failed and refused to bulletin and assign the position of Fuel Foreman, at Towanda, Pa., in accordance with provisions of the Clerks' Agreement.

2. That position as Fuel Foreman, Towanda, Pa., shall now be bulletined to employes in the Seneca Seniority District, and be assigned to the senior qualified applicant, and that such senior applicant, and all employes adversely affected by this violation be compensated for all losses sustained, retroactive to January 2, 1941, date of first conference concerning the violation.

EMPLOYEES' STATEMENT OF FACTS: During the period of negotiations with the Carrier for a new agreement, prior to March 1, 1939, it developed that all positions on the railroad, as Fuel Foreman, were covered by employes under the Clerks' Agreement, with the exception of Sayre, Pa. All Fuel Foreman positions were negotiated and placed under the scope of the current Clerks' Agreement, effective March 1, 1939.

At that time, the Fuel Foreman position at Sayre, Pa., was filled by Mr. John Hannan, an employe from the Hostlers' Roster. At the request of General Manager, Mr. Haines, Mr. Hannan was not disturbed from the position, for the reason that Mr. Hannan was approaching the pension age and would be retired. The Committee agreed to the request of Mr. Haines, on condition that upon Mr. Hannan's retirement, the Fuel Foreman position would be filled by employes under the scope of the Clerks' Agreement. General Manager Haines agreed to the condition.

About the time Mr. Hannan retired in December 1940, the Carrier erected a new fueling station at Towanda, Pa., and the servicing of locomotives with fuel and sand, on through passenger and freight trains was changed from Sayre, Pa. to Towanda, Pa. One position as Fuel Foreman and one position classified as Fuel Clerk, were discontinued at Sayre, Pa.

The Clerical duties existing on the discontinued Fuel Clerk position at Sayre were assigned to the Sayre Enginehouse Clerk, an employe covered by the Clerks' Agreement.

The supervision of the Sayre Fueling Station and the performance of the following clerical duties were assigned to a Shop Laborer, an employe not

The Rules Agreement of March 1, 1939, between the Carrier and the Brotherhood, established the rights of employees covered by the agreement, to the performance of Fuel Foremen's duties. This agreement obligates the Carrier to maintain such established positions so long as the duties remain in existence and do not disappear. The Carrier cannot, either by piece-meal, or wholesale, remove fuel foremen's duties so established and classified, out from under the Clerks' Agreement, without due notice, process and agreement.

In numerous Awards your Honorable Board has repeatedly held that Carriers can discontinue positions when the duties have disappeared or substantially been reduced in volume, yet, your Board has also consistently held that such duties as remain must be assigned to employees covered by the current agreement and for whose benefit the agreement is made.

We contend that we have proven our claim that the Carrier violated the provisions and intent of the rules when it failed and refuses to bulletin and assign the position of Fuel Foreman, Towanda, Pa. to employees of the Seneca District roster.

Your Honorable Board's attention is directed to AWARDS 139, 180, 234, 236, 385, 386, 450, 458, 459, 631, 637, 736, 751, 753, 1122, 1254, 1314, 1594, 1639 1673 and 1766 of the THIRD DIVISION

We therefore request that your Honorable Board sustain our claim on the facts presented.

CARRIER'S STATEMENT OF FACTS: A new automatic coaling plant was constructed at Towanda and the force established for the dumping of ash pans of engines and sanding and fueling the same. This force comes under the jurisdiction of the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, and comprises four men on each trick who perform all the work of servicing engines, including the dumping of ash pans, disposing of the ashes, sanding, watering and fueling of locomotives. The clerical work incidental to the handling of coal, seven to eight cars per twenty-four hours, being used, amounts to about one hour per day, and is taken care of by one of the clerk-telegraphers at the station.

POSITION OF CARRIER: The work at this coaling plant in no manner requires the position of fuel foreman. If he were put on, there would be nothing for him to do. As to the claim that clerical work is assigned to employee not covered by the Clerks' Agreement: it is the practice on this road, and has been for all time, for telegraph operators to do incidental clerical work at their stations. This has been recognized by the Brotherhood of Railway Clerks on this road and by your Board. There are no grounds for either the claim for foreman or clerical work at Towanda, as neither is necessary by the work required. There would be nothing for a foreman to do, and the clerical work now taken care of by the telegraph operator requires about one hour's work per day.

Rule 2 (a) of the Clerks' Agreement reads as follows:

"Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, or use of telephone in connection with such duties and work, shall be designated as clerks."

There is no violation of the Clerks' Agreement in the handling of the small amount of clerical work at this station, or in our declining to establish a position of Fuel Foreman, where such a position is not required. We, therefore, ask that the claim be denied.

OPINION OF BOARD: In this case, the Clerks' Organization contends that the supervision of the new fueling plant at Towanda, Pa., should be assigned to a fuel foreman, a position within the 1939 current agreement. Prior to

1940, the servicing and fueling of engines in this territory was done at Sayre, Pa. After that date, through freight and passenger engines were fueled and serviced at Towanda. Two positions were thereupon discontinued at Sayre; the remaining duties of the Fuel Clerk being properly assigned to the Engine House Clerk, and the position termed by the employes as Fuel Foreman being discontinued at that point. We held in Docket CL-2521, Award 2492, that the position of Fuel Foreman was never created or in existence at Sayre, and that need for one did not exist at that point after the servicing and fueling of engines on through trains was transferred to Towanda.

The record shows that the supervision of the fueling plant at Towanda was assigned to a Car Inspector in the first instance, and then to a fuel station laborer, a position outside the Clerks' Agreement. The Carrier contends that the fuel station laborer thus assigned was a mechanical foreman, although he was first assigned through error as a Fuel Foreman. The record shows, however, that Towanda was used as a point for servicing engines, including the dumping and disposal of ashes and the sanding, watering and fueling of engines. The employes used were under the Firemen and Oilers' Organization of the Shop Crafts. The fueling of engines at Towanda was handled by a new automatic coaling plant that required only about 10% of the mechanical foreman's time. The clerical work involved, other than that incidental to the fuel station laborer's work, was performed by a Clerk-Telegrapher, in accordance with what the Carrier terms a long continued practice. The Carrier offers and continues to offer to transfer this clerical work to the Clerk in the Supervisor's Office at Towanda, a position within the Clerks' Agreement. This offer having been subject to acceptance prior to the filing of this claim, it cannot be advanced as a basis for claim at this time.

We conclude that the position of Fuel Foreman has never been created at Towanda; that the work of supervising the fuel plant and the fueling of engines is such as not to require a Fuel Foreman; that all clerical work is being properly performed by employes under the Clerks' Agreement except, possibly, that assigned to the Clerk-Telegrapher which the Carrier has voluntarily offered to reassign as heretofore stated, and that the evidence, consequently, would not support 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 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 evidence is not sufficient to sustain a finding that the position of Fuel Foreman was ever created at Towanda or that there is any need for the assignment of such a position at that point.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1944.