

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, on August 1, 1943, position of Lighterage Clerk, Jersey City, was reduced from rate of \$190.10 per month, to rate of \$165.10 per month.
2. That the Carrier will now be required to restore the original rate of \$190.10 per month, plus subsequent wage increase of \$18.36 per month, and compensate Mr. Lawrence Nicolai for all monetary loss suffered since August 1, 1943.

EMPLOYEES' STATEMENT OF FACTS: The position of Lighterage Clerk, Jersey City, was bulletined to all employees in the New York Seniority District on July 17, 1941; bulletin reading as follows:

"CLERKS ADVERTISEMENT NO. 358

July 17, 1941.

TITLE OF POSITION.....	LIGHTERAGE CLERK
LOCATION	JERSEY CITY PIERS, JERSEY CITY, N. J.
RATE OF PAY.....	\$169.70
HOURS	6:00 AM. to 10:00 AM., 11:00 AM. to 3:00 PM. DAILY EXCEPT SUNDAYS AND HOLIDAYS.
DUTIES	GENERAL DUTIES INCIDENT TO POSITION OF LIGHTERAGE CLERK."

Mr. Nicolai was assigned to this position, by bulletin, under date of July 17, 1941.

Wage Award of 1941, \$20.40, increased rate of the position to \$190.10.

Mr. Nicolai continued to work this position, performing the same duties as was performed by his predecessor, Mr. Harry MaGuire, who was promoted to the position of General Foreman.

Agreement and, therefore, claim is without merit and not justified, and the Carrier requests the Board so to find and deny the claim.

OPINION OF BOARD: Claimant was assigned the position of Lighterage Clerk, rate \$190.10 per month, on July 17, 1941, after it was properly bulletined. He succeeded Harry MaGuire to the position when the latter was promoted to General Foreman. There is evidence in the record that Claimant continued to perform the same duties as MaGuire.

Prior to August 1, 1943, there was an office at Pier I employing two Clerks and an outside Clerk (Claimant). On August 1, 1943, the office at Pier G employing two Clerks was discontinued. One of the positions, rate \$165.10 per month, was transferred to Pier I and the other abolished. The position of Lighterage Clerk (Claimant) at Pier I was also abolished. Concurrently with the discontinuance of these two clerical positions, the Carrier created the positions of Lead Clerk, rate \$190.10 per month, and Pier Clerk, rate \$165.10 per month, at Pier I. It was the contention of the Carrier that this was done in effecting a consolidation of the office at Pier G with the one at Pier I. Claimant bid in the newly created Pier Clerk position, rate \$165.10 per month. He now contends he is performing the identical work he performed as Lighterage Clerk, rate \$190.10 per month, and contends that he should receive the same rate of pay therefor.

The Organization relies primarily on that portion of Rule 9 of the current Agreement providing:

"* * * but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

The record establishes that Claimant was performing substantially the same work on his new position of Pier Clerk, rate \$165.10 per month, as he performed as Lighterage Clerk, rate \$190.10 per month. The Carrier contends, however, that when Claimant assumed the position of Lighterage Clerk, he was unable to perform all the duties of the position but due to manpower shortage, he was permitted to continue on the position at the fixed rate and MaGuire, the General Foreman who was Claimant's predecessor as Lighterage Clerk, was permitted to perform some of the more important duties of Claimant's position.

While the Carrier has the right to reorganize its work in the interests of efficiency, it cannot properly violate its Agreement in so doing. It is evident that one of the primary purposes of the consolidation of the offices at Pier I and G was to re-rate the Claimant in accordance with the Carrier's idea of his worth. We do not think the Carrier can properly do this by the formality of abolishing his position and creating another at a reduced rate with essentially the same duties. If Claimant was not qualified to perform the duties of his assignment, Carrier had agreement authority to disqualify within a fixed period. But having failed to do so, the Carrier cannot now accomplish the same result by abolishing his position and assigning him another with the same duties at a reduced rate. We think this is so even if the employe bid in the new position with knowledge of the reduced rate. The position as bulletined might well show duties which the bidder, because of long experience, might feel were the only ones he could satisfactorily perform. An affirmative award is required.

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 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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of May, 1946.