

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

LEHIGH AND NEW ENGLAND RAILROAD COMPANY

STATEMENT OF CLAIM: 1. Claim of the System Committee of the Brotherhood that the Carrier violated the seniority and other rules of the Agreement effective July 1, 1921, when on April 12, 1946, Clerk Weston Miller was instructed to leave his regular assigned position of Clerk in the Office and Seniority District of the Superintendent of Motive Power and perform duties of position Stenographer-Clerk in Office and Seniority District of the Trainmaster.

2. Claim of the System Committee of the Brotherhood that the Carrier continued to violate rules of the Agreement effective May 1, 1946, when Weston Miller was required to perform duties in the Office of Trainmaster for a period of four and one-half hours daily.

3. That Clerk Weston Miller be compensated for an additional four and one-half hours daily at the rate of \$251.10 per month from June 1, 1946 until April 30, 1947.

EMPLOYEES' STATEMENT OF FACTS: On April 12, 1946, Weston Miller, regular assignment incumbent of position of Clerk in the Office and Seniority District of Superintendent of Motive Power, Pen-Argyl, Pennsylvania, hours 7:40 A. M. to 12 Noon and 12:20 P. M. to 4:00 P. M., rate of pay \$196.00 per month (increased to \$201.10 effective May 22, 1946) was verbally instructed by Chief Clerk, Superintendent of Motive Power, to leave his regular assigned position of Clerk in the Office and Seniority District of the Superintendent of Motive Power and perform duties on position and assignment of Stenographer-Clerk, rated \$246.00 per month (increased to \$251.10 effective May 22, 1946) in the Office and Seniority District of Trainmaster, Pen-Argyl, Pennsylvania.

On October 20, 1943, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes were recognized as the representatives of the Clerical Forces, Freight Handlers, and Station Employes on the Lehigh and New England Railroad Company. There was in effect at that time an agreement effective July 13, 1921, between the Lehigh and New England Railroad Company and its Clerical Employes. Subsequent to being recognized, the Lehigh and New England Railroad Management furnished the Brotherhood representatives with a copy of such agreement.

After extended negotiations, a new agreement was signed on April 2, 1946, bearing effective date of May 1, 1946.

Clerk Miller was compensated for work performed from June 1, 1946 to April 30, 1947 at the rate of \$201.10 per month. During this period he worked eight (8) hours each day Monday through Friday and four (4) hours each Saturday. He did not work Saturday afternoons, Sundays or holidays. He worked approximately one-half day each week day, and on Saturday mornings, at clerical work only, in the Office of the Superintendent of Motive Power and the other one-half day each week day in the Office of the Assistant General Superintendent, both offices in Seniority District 4, effective May 1, 1946. He was required to work in the Office of the Assistant General Superintendent due to work being transferred to that office from the Office of the Superintendent of Motive Power when the Office of Assistant General Superintendent took over certain duties and responsibilities of the Superintendent of Motive Power on March 16, 1946.

Clerk Miller was properly paid for the service he performed from June 1, 1946 to April 30, 1947, under the rules of the Agreement effective May 1, 1946.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket presents the claim of Weston Miller, a Clerk in the Office and Seniority District of the Superintendent of Motive Power of the Carrier, for compensation for an additional 4½ hours duty at the rate of \$251.10 per month from June 1, 1946 until April 30, 1947, because, during that period, he was assigned, during the hours of his regular position, to perform services for approximately 4½ hours daily in the Office and the Seniority District of the Trainmaster of the Carrier at Pen Argyl, Pennsylvania.

The Organization, on October 20, 1943, was recognized as the representative of the Clerks under the provisions of the Railway Labor Act. The employees involved at that time were working under an agreement with the Carrier which became effective in 1921. On April 2, 1946 the Organization and the Carrier executed the Current Agreement to become effective May 1, 1946.

On April 12, 1946, the Carrier required the Claimant, who then held a regular position as Clerk in the Office and Seniority District of the Superintendent of Motive Power, Pen Argyl, Pa., to leave his regular position and to perform work in the Office and Seniority District of the Trainmaster at Pen Argyl, Pa. The Claimant in the Trainmaster's office performed work of and assisted W. H. Allen, who held the position of Chief Clerk in that office.

Claimant's regular position was at the rate of \$196.00 per month (\$201.10 effective May 22, 1946) while the position of the Chief Clerk in the Trainmaster's Office was at the rate of \$246.00 per month which was increased to \$251.10 per month effective May 22, 1946.

On April 25, 1947, it was agreed between the parties to abolish the regular position of the Claimant in the Office of the Superintendent of Motive Power and to establish a new position of Clerk-Stenographer in the Office of the Trainmaster, then the Office of the Assistant General Superintendent, with the rate of \$201.10 per month. The Claimant was assigned to the new position pursuant to the provisions of the Current Agreement.

The first item of the claim contends that the assignment of the Claimant, on April 12, 1946, to perform duties in the Office of the Trainmaster, constituted a violation of the Agreement of July 1, 1921. Since no money claim has been presented on this alleged violation and the alleged violation had ceased prior to the time the matter was presented to this Board, the question of whether such action of the Carrier constituted a violation of the 1921 agreement is moot and this item of the claim should be dismissed. Award 4036.

The Carrier insists that it's continuing to use this Claimant on work of the Chief Clerk, in the Trainmaster's Office from May 1, 1946 to April

20, 1947, did not violate any rule of the Current Agreement which became effective May 1, 1946.

The Carrier insists that under the provisions of 7 (c) of the Current Agreement the Seniority Districts of the Office of the Superintendent of Motive Power and of the Trainmaster were consolidated into one Seniority District and that it was, therefore, proper to use the Claimant for a part of his regular hours each day in the Trainmaster's Office.

The Organization points out, however, that rule 7 (b) of the Current Agreement expressly provides that "The following seniority districts will be continued as long as any names appearing on rosters covering said districts as of April 30, 1946, remain thereon:". Following that provision the "Superintendent of Motive Power's Office at Pen Argyl, Pa." and "Trainmasters Office at Pen Argyl, Pa." are both named. The Organization made a part of the record in this case, photostatic copies of:

(1) The Seniority Roster of January 1, 1947 of the Superintendent of Motive Power's Office at Pen Argyl, Pa. "Covered by Rule 7 (b) in Agreement Effective May 1, 1946", which included in Group 1 (c) the name of the Claimant with a seniority date of "3-3-43." Several other names were also included.

(2) Seniority Roster as of January 1, 1947, of the Trainmaster's Office at Pen Argyl, Pa. "Covered by Rule 7 (b) in Agreement effective May 1, 1946," which included the name of W. H. Allen and several others.

(3) Seniority Roster as of January 1, 1947, for the consolidated Seniority District No. 4, "Covered by Rule 7 (c) in Agreement Effective May 1, 1946, including Stores Department, Superintendent of Motive Power's Offices, Trainmasters, Operators, Yard Offices," etc. This roster included the names of the Claimant and of W. H. Allen, both with a seniority date of 5-1-46.

The Carrier insists that since Rule 7 (c) provided for a consolidation into one general seniority district of the Seniority Districts of the Superintendent of Motive Power's Office and Trainmaster's Offices as of May 1, 1946, there could be no violation of the Current Agreement by using the Claimant for part of the day in one office and for the remainder of the day in another office in that same general seniority district.

At first glance Rules 7 (c) and 7 (b) of the Current Agreement seem to be in conflict. A careful study and consideration of these two rules in connection with the seniority and other rules of this Agreement and with the factual situation existing between the parties, forces us to the conclusion that the two rules were not intended by the parties to be in conflict; that Rule 7 (c) provided a plan for the eventual consolidation of all employees covered by the agreement into general seniority districts, while it was intended by Rule 7 (b) to protect the seniority and rights of the employees in the particular seniority districts therein named, including the seniority districts of the two offices here in question. That rule expressly provided that these seniority districts should be continued as long as any names, appearing on the rosters thereof as of April 30, 1946, remained thereon. The Carrier contends that this provision of the Current Agreement was only to prevent the old employees on those rosters from being bumped. That is not the provision of the rule. The rule expressly says that the seniority districts will be continued. It is, therefore, reasonable to assume that the parties had in mind not only preventing the positions of these older employees be taken away from them but also preventing the work of the positions being taken away by someone holding no seniority in that district. If this is true, we must then hold that it was a violation of the agreement to assign the Claimant to do work in the Office of the Seniority District of the Trainmaster when the employees in that Seniority District had the first right and equity to such work.

The Organization contends that Rule 30 of the Current Agreement requires the payment to the Claimant of the higher rate of the position of the Chief Clerk while the Claimant was doing part of the work of that position. With this contention we cannot agree. The rule reads:

"30(a). Employees temporarily assigned to higher rated positions, subject to this Agreement, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such positions. This provision will not apply when absent employee is paid. Assisting higher rated employees does not constitute a temporary assignment."

The record here seems to clearly indicate that the Claimant in doing this work did not assume the duties and responsibilities of the position of Chief Clerk but that he was only assisting the Chief Clerk with the work of that position. The rule expressly excepts from its operation "assisting higher rated employees."

The Organization also contends that the action of the Carrier in this case amounts to a violation of Rule 20(c) which provides:

"Employees shall not be required to suspend work during regular hours to absorb overtime."

It is evident in this case that the Claimant was required to suspend the work of his regular position for about four and one-half ($4\frac{1}{2}$) hours on five days of each week during the period and it is reasonable to assume that if he had not been required to do the work in the office of the Trainmaster some of the regular employees in that office in that seniority district would have been required to work overtime in order to perform the work which the Claimant did.

The Organization also contends that the Carrier violated Rule 29(a) of the Current Agreement by failing to adjust the rate of the Claimant on account of "Increase * * * in the duties and/or the responsibilities of a position or change in the character of the service required." The Organization failed to meet the burden of proving that the Claimant here, in the time he spent in the Trainmaster's Office, was doing work or was under responsibilities materially different from the work and responsibilities of his regular position.

We, therefore, hold that the Carrier violated the Current Agreement by requiring the Claimant on the first five days of each week of the period in question to perform work in the Trainmaster's Office and that for such violation the Claimant should be paid for the time he so worked in the Trainmaster's office on the basis of a monthly rate of \$201.10, the rate fixed for the new position in that office to which he was assigned on May 1, 1947.

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 Carrier violated the Current Agreement as alleged in Claim (2) and Claimant should be compensated for an additional $4\frac{1}{2}$ hours for five days each week during the period involved at the monthly rate of \$201.10; and that Claim (1) presents a moot question and should be dismissed.

AWARD

Claim (1) is dismissed. Claims (2) and (3) sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1948.