

Award No. 6179
Docket No. CL-6115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation

Thomas C. Begley, Referee

Serial No. 140

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
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, on November 8, 1948, it abolished a position of Assistant Foreman, held by J. Fantaccioni at Hoboken, N. J., Passenger Station, rate \$316.46 per month and, concurrent therewith, the duties and work attached to such position, fully covered by the scope and operation of the Clerks' Agreement, was arbitrarily assigned to a Stationmaster position, excepted from the Clerks' Agreement, and to another position of Stationmaster which was established as of November 1, 1948, without proper conference and negotiation as provided in the Clerks' Agreement, and:
- (2) The Carrier shall be required to meet the Clerks' Committee to carry out the intent and purpose of the principles contained in the Clerks' Agreement, insofar as the establishment of the additional Stationmaster position is concerned.
- (3) That as a result of the action of the Carrier in violation of the Agreement terms, Mr. Fantaccioni shall be reimbursed for each day since November 8, 1948, up to the time the violation is corrected, the difference in the amount of what he has been paid for each straight time day and what he would have been paid, had his position of Assistant Foreman not been improperly discontinued, and further, that all or any other employees who may have been affected by the violation cited, shall be reimbursed for any and all monetary losses sustained as a result thereof, on November 8, 1948, and subsequent thereto, until the condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a large Passenger and Mail and Baggage Station at Hoboken, N. J., which embraces approximately one hundred and ten (110) regularly assigned positions, with

the Clerks' Organization shown any necessity of restoring the position of Assistant Mail Foreman as claimed.

- (4) There is no rule, precedent or practice, that gives Clerks' Organization justification for the claim. The claim should be denied.

All data in support of the Carrier's position has been handled in conference with representatives of the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: The scope rule of the effective Agreement lists the exception thereto as contained on "Personal Office Force List No. 1." This list contains under the heading "Superintendent, Hoboken," the following: 1) Chief Clerk, 2) Personal Stenographer to Superintendent, 3) Personal Stenographer to Assistant General Superintendent, 4) File Clerk, 5) Division Accountant, 6) Stationmaster, and 7) Assistant Stationmasters. The rule further states as to excepted positions:

"New positions or reclassifications of existing positions shall be subject to conference between the Management and the General Chairman for the purpose of determining whether such positions shall be excepted. In filling appointive positions (those which are not required to be advertised) in other than entirely excepted offices, full consideration shall be given to senior qualified employees coming under the provisions of this agreement."

This list indicates that the position of one Stationmaster is excepted at Hoboken and it is necessary for the Carrier, if it wishes to establish another excepted Stationmaster position at this passenger station, to do it by conference with the Organization under the rules of the effective Agreement.

While it is true that it is the responsibility of the Carrier to decide the amount of supervision needed, Awards 4992, 5225, 6076, it must carry out the assigning of the supervisory employees under the terms of the Agreement with the Organization. They cannot abolish the position of Assistant Foreman and establish a position they believe excepted from the Agreement to perform the work of the abolished position. If the parties, at the time of drawing up the list of excepted positions, had in mind more than one Stationmaster at Hoboken, they would have so stated. The excepted list contains fourteen (14) job classifications in the plural. The claim must be sustained in that the Agreement has been violated by the Carrier. 2) That the Carrier, in order to establish an excepted additional position of Stationmaster, shall be required to meet with the proper parties designated by the Clerks' Organization. 3) That the Claimant, Fantaccioni, be reimbursed, for each day since November 8, 1948, up to the time this award is put into effect, any monetary loss suffered by reason of the Carrier's abolishment of his position. 4) As to the claim of other employees not named, affected by the abolishment of the Assistant Foreman's position, we should not attempt to decide their claims as they have not been presented to us, nor are they sufficiently brought out in the record before us.

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 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 Agreement has been violated by the Carrier.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.

Interpretation

Serial No. 140

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 6179,
DOCKET NO. CL-6115**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The Delaware, Lackawanna and Western Railroad Company.

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Award in this docket was based on what this Board found to have been a violation of the Agreement by the Carrier when it abolished the position of Assistant Foreman held by the claimant at Hoboken, N. J., and assigned to a Stationmaster the work and duties attached to the Assistant Foreman's position. It reads in part as follows:

3) That the Claimant, Fantaccioni, be reimbursed, for each day since November 8, 1948, up to the time this award is put into effect, any monetary loss suffered by reason of the Carrier's abolishment of his position."

The Carrier contends that the claimant should receive under this award the amount of earnings received for an 8-hour day at the straight-time rate of the abolished position of Assistant Foreman, less the amount received, by the claimant, for an 8-hour day at straight-time rate plus all overtime earned since the Assistant Foreman's position was abolished on November 8, 1948.

The Carrier's position and the awards and cases submitted in panel argument would be deserving of consideration if the Carrier had shown affirmatively that overtime was a regular and essential part of the position held by the claimant since November 8, 1948. Failing in this, we are presented merely with a case of casual overtime. We cannot accept the interpretation which the Carrier places on this Award. The words "monetary loss suffered by reason of the Carrier's abolishment of his position" mean the difference between the regular rate of pay of the abolished position of Assistant Foreman and the regular rate of pay of the position worked by the claimant from November 8, 1948, to the date this award is put into effect. This means the regular rate of pay for 8 hours without regard to overtime pay. The overtime rate applies only when work in excess of eight hours in any day is actually performed, work in excess of forty hours per week under the Agreement, or work performed on the holidays set forth in the Agreement. The overtime rule has no application in computing the monetary loss of a position that has been abolished in violation of the contract by the Carrier.

Referee Thomas C. Begley, who sat with the Division as a Member when Award 6179 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of February, 1954.