

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

BOSTON & ALBANY RAILROAD (N.Y.C.R.R.Co., Lessee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The carrier violated the current Clerks' Agreement when effective with the close of business on August 4, 1952, it abolished the position of the Clerk in the Freight House at Springfield, Mass., which position was regularly assigned to Clerk B. S. Mias while all of the duties and responsibilities of the said position remained to be performed and further violated the said Agreement by assigning the duties and responsibilities of the abolished position in part to other clerical employees occupying lower rated positions and in part to an employee occupying a position excepted from full coverage of the Clerks' Agreement; and that

(2) The abolished position shall be promptly reestablished and assigned to the last former occupant, Mr. B. S. Mias; and that

(3) Mr. B. S. Mias shall be fully compensated for all wage losses sustained; and that

(4) Clerks V. Shortsleeves and S. Winiarz shall each be paid the difference between the amount actually received at the lower rate of their position and the amount they should have received on August 5, 1952 and subsequent dates for the actual time required to perform the work of the higher rated position as provided in Rule 37, and that

(5) All other employees adversely affected shall be fully compensated for all wage losses sustained, by virtue of the violations.

EMPLOYEES' STATEMENT OF FACTS: Prior to the close of business on August 4, 1952, the clerical force in the Foreman's Office, Springfield Freight House, Springfield, Mass. consisted of the following:

1 Clerk, 8 A.M.-5 P.M., Mon. thru Fri., rate of pay \$1.7145 per hr., held by B. S. Mias

1 Clerk, 8 A.M.-5 P.M., Mon. thru Fri., rate of pay \$1.6710 per hr., held by S. Winiarz

1 Clerk, 8 A.M.-5 P.M., Mon. thru Fri., rate of pay \$1.6350 per hr., held by V. Shortsleeves

work for the purpose of reducing the rate of pay or evading the application of these rules.

No new position was created "under a different title covering relatively the same class of work" for the purpose of reducing the rate of pay. As previously stated, the Carrier simply abolished a position, reorganized and redistributed the work to the other agreement clerks in the office so as to produce greater efficiency, and there has been no violation of this rule.

3. AWARD OF THE THIRD DIVISION, N.R.A.B., SUPPORTS CARRIER'S POSITION.

In Award 4446 (Docket No. CL-4385, Clerks vs Long Island R. R. Co.) before Referee Adolph E. Wenke, it was brought out clearly that a Carrier will not be required to employ a greater force than is necessary in the efficient handling of its business, the determination of such matters being the prerogative of management and resting primarily with it,—except to the extent it has limited itself by contract. (Emphasis added).

This carrier in endeavoring to handle its business efficiently with no greater force than necessary acted within the prerogative of management; and in rearranging the work of its forces in accordance with the determination of its requirements, acted within the limitations of its contract with the claimant brotherhood.

CONCLUSION:

This carrier holds that in the rearrangement of the work in its Springfield Freight office and the abolishment of the position held by Mr. Mias it did not violate any provision of the contract with the Brotherhood of Railway and Steamship Clerks. The duties were redistributed among members of the same group and in the same seniority district; and in such a way that none was overburdened. No overtime work has resulted or been required in consequence of the rearrangement. No complaints have been received from the individuals affected relative to being overburdened.

Carrier therefore feels that as there was no violation of contract as alleged, the claim is based on an erroneous assumption or assertion and should be denied.

The position of the Carrier has been made fully known to the organization. If there should be found in the Brotherhood's ex parte submission any new evidence or arguments, Carrier reserves the right to supplement its presentation.

(Exhibits not reproduced).

OPINION OF BOARD: Prior to August 5, 1952, the following clerical force was employed in the Foreman's Office of the Freight House at Springfield, Mass.:

Name	Position	Daily Rate
B. S. Mias	Clerk	\$13.716
S. Winarz	"	13.368
V. Shortsleeves	"	13.080

On July 30, 1952 the Agent posted a notice declaring abolished, effective with the close of business on August 4, 1952, the position of Clerk in the Freight House, rate \$13.716 per day, held by B. S. Mias; thereupon Mias exercised his displacement rights to the position of Gang Leader at the same rate of pay. Mias did not actually take over his Gang Leader position until

Monday, August 11, on account of being used on vacation relief, August 5 through 8, at no reduction in rate of pay.

Some of the duties of the discontinued position formerly held by Mias were assigned to a clerical position in another seniority district, this for two days, and for about one week, some to the Foreman, a position excepted from Seniority Rules 4, 8 and 14. The rest of such duties were assigned to Checkers and Gang Leaders with same rate of pay, and to Claimant Clerks S. Winiarz and V. Shortsleeves, rates \$13.368 and \$13.080 per day, respectively.

There is sharp disagreement between the parties as to the amount of time Claimants Winiarz and Shortsleeves, or other employes in the Foreman's Office have devoted, since August 4, 1952, to the higher rated duties of the discontinued position formerly held by Mias, but to that extent such employes should be paid, for the time so devoted, the difference between the rate received and the rate thereof which was \$13.716 per day. This amount of time can only be determined by the parties on the property, to whom that question is hereby referred.

As to the involved work performed by the employe in the other and different seniority district, and by the Foreman who is excepted from Seniority Rules 4, 8 and 14 for the brief periods indicated, while such was alleged to be contrary to the provisions of the Agreement, since such work was returned to the proper seniority district, and to the application of all the rules thereof, promptly upon complaint, we hereby dismiss that issue.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 per Opinion.

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 9th day of February, 1954.