

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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 on the Lehigh Valley Railroad that the Carrier violated the Clerks' Agreement:

1. When it removed the clerical work at Irvington, N. J. from clerical agreement, consisting of :

- A. Compiling AR 621—Daily Balance sheet.
 - a. Pull Cashier's memos and balanced freight and tax on cash received.
 - b. Match checks and cashier's memos to balance freight and tax on checks received.
 - c. Balance totals and type AR 621.
 - d. Type TR-9 (Deposit slips).
 - e. Endorse checks and mail deposit to bank.
- B. Separate, set up and mail bills for payment.
 - a. Set up bills on delivered L.C.L. for mailing (By checking AT 265's)
 - b. Set up bills on C/L bills for mailing.
 - c. Set up prepaid, C/L and LCL bills for mailing.
 - d. Stamp all bills and cashier's memos with due date.

- e. Address, seal and stamp envelopes.
- f. File Cashier's memos in open-bill folders.
- C. Set up L.C.L. bills for delivery for freight.
 - a. Go through all freight bills inserting arrival notices and separate bills for cash and credit patrons.
 - b. Notify patrons on arrival of freight.
 - c. Pull "under the rate" bills, mail arrival notices for freight to be picked up.
 - d. Call consignees on "under the delivery-rate" bills to determine if they wish delivery with an extra charge.
 - e. Mail arrival notices on GHL and COD shipments.
 - f. Answer telephone calls and correspondence incidental to duties performed.
 - g. Pull all overdue cashier's memos and call delinquent patrons.
- D. Receive AR 265's and 266's from drivers.
 - a. Check for cash paid to driver.
 - b. Make sure a signed and dated delivery receipt is turned in on every shipment listed.
 - c. Count cash on hand and balance with sheet and cash payments throughout the day.
 - d. Compile cash and make out money order slip for agent to get at Post Office.
- E. Issue refund drafts.

The above duties were formerly assigned to a Cashier's position which was covered by the Clerk's Agreement. Effective November 1, 1943, the position of Clerk-Telegrapher was transferred from Hillside, N. J. to Irvington, N. J. Some of the above duties were assigned to the position of Clerk-Telephoner which is covered by the Telegraphers' Agreement.

(2) The following clerical duties are performed each day by Agent Walsh, a supervisory position excepted from all rules of the Clerks' Agreement:

- (a) Makes inspection of damaged freight and compiles reports in connection therewith. Time consumed averages two (2) hours daily.
- (b) Upon receipt of "phone calls, traces freight shipments. Time consumed one hour daily.

That the parties to this dispute, the Brotherhood of Railway and Steamship Clerks and the Lehigh Valley Railroad, attended an oral hearing thereon on April 7, 1953:

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 no jurisdiction over the persons involved herein who have not been given notice of the hearing.

That this Division of the Adjustment Board has jurisdiction by law over all the classes of employees and the dispute involved herein.

That the claim should be dismissed without prejudice for lack of jurisdiction over the person not notified.

AWARD

Claim dismissed without prejudice and in accordance with the Opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon, (s)
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.

This dispute remains unadjusted and it is now respectfully resubmitted herewith for Adjudication on the merits of the claim as originally made.

On November 1, 1943 when the position of Clerk-Telephoner was transferred from Hillside, N. J. to Irvington, N. J. positions subject to the scope and operation of the Clerks' Agreement at Irvington, N. J. consisted of:

Name	Title	Monthly Rate of Pay 11/1/43
R. McNeir	Lead Clerk-Cashier	\$185.30
H. Goggin	Rate Clerk	173.60
J. Cogan	Receiving & Dely. Clerk	165.30
W. R. Biggin	*Demurrage Clerk	165.30
A. P. Kitchell	Yard Clerk	165.30
J. Rittersbacher	General Clerk	163.30
J. M. Valdes	*Clerk-Stenographer	152.80
J. Metelski	Claim Clerk	165.30
M. McDonough	R&D Clerk	165.30
M. Lutz	Clerk	165.30
Three (3) Truckers		.67 Per hour

* Cost-of-living increase not included.

The employees coming within the scope and operation of the Clerks' Agreement on January 11, 1950 at Irvington, N. J. consisted of:

the Clerks and Telegraphers as to the right to the jobs in question becomes justiciable and that the Third Division now lacks jurisdiction in determining the merits of such controversy on account of the lack of indispensable parties, to-wit, the Telegraphers.

OPINION OF BOARD: It is undisputed that the claim before us is a resubmission of the identical dispute that was dismissed "without prejudice" by this Division on February 11, 1954 in Award 6482.

The Carrier maintains that Award 6482 constitutes a final and binding disposition of the dispute and that the words "without prejudice" do not permit the identical claim to be passed upon a second time by the Board. The point has been ruled upon by the Board and there is no question but that its awards support the Carrier's contention. See Award 9025 of this Division and Interpretation No. 1 to Award 1740 of the Second Division. While this Referee considers the use of the words "without prejudice" unfortunate if they were intended to convey the meaning urged by Carrier, he is inclined to follow precedent on the point in issue, particularly in view of the Railway Labor Act's requirement that where no money award is concerned, as in the present case, the Board's "awards shall be final and binding upon both parties to the dispute."

It is accordingly our opinion that the Board has no jurisdiction over the claim before us in view of Award 6482.

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; and

That the claim is improperly before the Board.

AWARD

Claim dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.