

Award No. 11918
Docket No. CL-11713

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

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

1. The Carrier violated the provisions of the Clerks' Agreement and specifically the Scope Rule and Rules 2-A-1, 2-A-2, 2-A-8, 3-C-1, 3-F-1, 4-A-1, 4-G-1, 4-G-2 and 9-A-1, when it created a new clerical position, rate \$650.00 per month, and failed and refused to bulletin and award said position as specified in the Rules Agreement, and
2. The Carrier shall bulletin and award this new clerical position as stipulated for in the Rules Agreement, and
3. The Carrier shall pay Clerk William Williams the difference between \$458.64 per month and \$650.00 per month starting on January 1, 1959 and each day thereafter until the violation(s) are corrected, and
4. After the violations are corrected by proper bulletin and award the affected clerks who would have been advanced if the violations had never occurred, shall be compensated for all wage losses, starting on January 1, 1959 and each day thereafter until the violations are corrected. Wage losses of all affected employees shall be determined by a joint check of company records.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreements effective July 1, 1945 and the National Agreement signed at Chicago, Ill., August 21, 1954, covering clerical, other office, station and storehouse employees between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts, various Rules and Memorandums therefore may be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Rules Agreement when it withdrew

month (rate of clerical position he is presently filling) and \$650.00 per month (rate of pay of Secretary, Long Island Rail Road Voluntary Relief Fund). Such a claim, of course, is without merit since a clerical position was not established.

The claim made by the Brotherhood in Paragraph 4 of its Statement of Claim should be dismissed on the grounds that it is vague and indefinite, since it does not identify the individuals for whom claim is made or the specific dates involved (See Award No. 7836, 3rd Division, N.R.A.B.). Many awards of this Division, among which were Nos. 906-2125-4372-4117-6708-8124-8203-8330 and 8674, do not propose to require the Carrier to search its records to develop claims for unidentified claimants on unspecified dates.

The Agreement provides that a claim to be valid must be made on behalf of an individual. See Special Boards of Adjustment No. 90 (Referee Yeager) and No. 118 (Referee Begley).

In summarizing its position, the Carrier desires to emphasize the following points:

1. The Carrier did not create a new 'clerical position' as alleged by the Brotherhood, but did create a position of Secretary, Long Island Rail Road Voluntary Relief Fund, in accordance with that part of Paragraph 4 of its Regulations previously quoted in the Carrier's Statement of Facts, which position is a supervisory or official one outside the scope of the clerical Agreement.
2. Since there was no new clerical position created, there is no necessity for its being bulletined and awarded to clerical employees.
3. The monetary claims set forth in Items 3 and 4 of the Statement of Claim should be denied for the reasons set forth herein.

In view of the facts presented and for the reasons outlined above, this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: When Carrier terminated its association with the Relief Department administered by the Pennsylvania Railroad, it arranged to administer its own Long Island Railroad Voluntary Relief Department effective January 1, 1959. George A. Thurlow was appointed Secretary of the Voluntary Relief Department.

Petitioner contends that the newly created position of Secretary of the Relief Department is predominantly clerical and therefore falls within the scope of the Clerks' Agreement. It alleges that Carrier violated the agreement when it did not bulletin and award the position as provided for under the Clerks' Agreement.

Carrier argues that no new clerical position was created, and that since the position of Secretary is primarily supervisory and official in nature, it is not subject to the Clerks' Agreement.

In determining this claim it is necessary to ascertain the duties and responsibilities of Mr. Thurlow in his capacity as Secretary of the Department. An examination of the work of Claimant and of the regulations of the Voluntary Relief Department clearly indicates that the work of the Secretary is much more than clerical; it is preponderantly administrative and executive. His responsibilities, among others, include determining proper classification in cases of doubt, judging the validity of claims of death benefits, deciding if partial prepayments on death claims should be made, and taking charge of all the business of the Department. His duties require discretion, judgment, administrative and executive abilities, and skills which are beyond those recognized as clerical. He may perform some clerical task in connection with his responsibilities, but these activities do not classify him as a clerk. Although his title is Secretary, he cannot be regarded as such under the Clerks' Agreement, for he is not a secretary to an individual; he is the official of the Department. The executive nature of his position is further emphasized by the fact that the same work performed is by the Manager of the Employees' Benefits of the Pennsylvania Railroad, an official — not a clerk.

We find that Carrier did not violate the Clerks' Agreement when it created the new position of Secretary of the Long Island Railroad Voluntary Relief Department.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.