

SPECIAL BOARD OF ADJUSTMENT NO. 374

Brotherhood of Railway and Steamship Clerks, Freight Handlers,
Express and Station Employees

and

The Pennsylvania Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1. (a), and 2-A-2. (a), (b) and (c), when it failed to bulletin and award a vacancy existing on clerical position, Symbol A-58-B, in the Consolidated Operating Office, Indianapolis, Indiana, former Southwestern Division, effective July 1, 1954.

(b) The Claimant, J. M. Davenport, should be allowed eight hours' pay a day, as a penalty, for July 1, 1954, and all subsequent dates until the violation is corrected. (Docket 126)"

FINDINGS:

Decision in this case must turn on the Claimant being paid the difference between what he earned in position or positions from July 1, 1954 and that which he would have earned had Carrier properly bulletined and assigned him to the vacancy on clerical position, Symbol A-58-B; or should the claim be sustained as made, i.e., "be allowed eight hours' pay a day, as a penalty, for July 1, 1954, and all subsequent dates until the violation is corrected."

We have carefully read the record on this point. We have also examined Third Division Awards in which we participated and which involved the Clerks' Organization, on comparable claims.

In such claims as were sustained, we granted Claimants wage loss for the period involved. That was all that was asked for in those claims.

While Carrier admits a Rules violation, the record also shows position to have been, at various times, in a personal, a bulletined and an exempt category.

We think the wage loss theory is sound and equitable, but it should be based on straight time earnings.

AWARD:

Claim sustained in accordance with Findings.

SBA 374
Docket No. CL-11171
Award No. 8

Signed this 12th day of December 1961.

/s/ Edward A. Lynch
E. A. Lynch, Chairman

/s/ A. E. Myles
A. E. Myles, Carrier Member

/s/ A. B. Seward
A. B. Seward, Employe Member