Award No. 4044
Docket No. CL-3918

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) Rule 3-C-2 was violated when positions, Symbols B-96-G and B-97-G, incumbents J. G. Dieckman and P. L. Baxter, were abolished effective August 22, 1945.

(b) These positions be reestablished and the incumbents as well as any others affected be compensated for all work performed before and after the tour of duty of their former positions at rate of time and one-half under the provisions of Rule 4-A-6.

(c) The incumbents and all others affected be compensated at rate of time and one-half for all work performed on the former relief day of their positions under the provisions of Rule 4-A-2.

(d) The incumbents and all others affected be compensated for 8 hours' pay at rate of time and one-half for work not performed that was part of their former assignments, under the provisions of Rule 4-A-3.

(e) The original claim was not denied under the provisions of Rule 7-B-1 (c) and is automatically payable. (Docket W-380.)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1st, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood, which is on file with your Board, and will be considered as a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Prior to August 22, 1945, the following clerical positions were in existence at Jeffersonville, Indiana, Yard, which positions were under the jurisdiction of the Train Master:

Symbol	Incumbent	Rate	Tour of Duty
B- 93-G	C. J. Ruck	$182.96	4:00 P. M. to 12:00 M.
B- 95-G	D. L. Trobaugh	194.96	12:00 M. to 8:00 A. M.
B- 96-G	J. D. Dieckman	173.96	8:00 A. M. to 4:00 P. M.
B- 97-G	P. L. Baxter	184.96	4:00 P. M. to 12:00 M.
B-110-G	C. E. Mitchell	198.96	8:00 A. M. to 4:00 P. M.

properly denied by a Superintendent. There is nothing in Rule 7-B-1 to support this contention.

It should be noted that paragraph (c) of Rule 7-B-1 provides that claims will automatically be allowed only when the Carrier violates its undertaking that "the employe will be notified . . . in writing, within thirty days from the date this claim was presented," whenever the Carrier intends to deny the claim. It should be observed that the rule does not specify which officer of the Carrier shall notify the employe of the denial of his claim. In the present case, no individual employe was named in the original claim, and it was obviously necessary that the Carrier address the denial to the Division Chairman of the Organization rather than to an employe involved in the dispute. The Superintendent's denial was obviously made within the thirty day period required by the rule, and was made in writing within that time. It is clear, therefore, that the Carrier has fully complied with the provisions of Rule 7-B-1 in this case.

The Carrier submits, therefore, that in abolishing clerical positions Symbols B-96-G and B-97-G at the Jeffersonville, Indiana, Yard it fully complied with the provisions of the applicable Agreement. Furthermore, it is submitted that the claim in the present case was properly denied by the Carrier in accordance with the provisions of Rule 7-B-1 of the applicable Agreement. Consequently, the claim of the Employes in the present case before your Honorable Board is without foundation and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine dispute growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement the clerical positions herein involved were properly abolished, the claim was properly denied, and the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

(Exhibits not Reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. In the latter part of 1944, there were three clerical positions assigned to Jefferson Yard, on the Indianapolis Division of the Carrier, designed as Symbol B-110-G, B-93-G, and B-95-G. On November 9, 1944, position B-96-G was established, and on December 5, 1944, there was established in said yard position B-97-G,

both clerical, and covered by the Clerk's Agreement. Said positions were established to take over, in part, work which had been theretofore performed by a yardmaster, and also to perform the same character of clerical work as that performed by the existing clerical positions. The yardmaster's work, so assigned to the newly established positions, consisted of making track checks. preparing form C-T-362, for cars in trains received and dispatched, and tracing car and revenue bills for no-bill cars. After said new positions were established, yardmasters continued to perform some of the work of that character, and this situation continued until August 22, 1945, when said positions, B-96-G and B-97-G, were, by the unilateral act of the Carrier, abolished, and the work thereof was principally transferred or assigned to the clerical positions remaining in the yard, but, on the first and second tricks, certain of the work which the abolished positions had performed was assigned to yard masters, limited, however, to the type of work they had performed prior to the establishment of the positions abolished. The present claim is based on an alleged violation of Rule 3-C-2 (a) of the Clerk's Agreement, when, in violation of sub-section (1) of said rule, the Carrier failed to assign all the work of the abolished positions to employes covered by the said Agreement. The Rule in question reads as follows:

> "3-C-2 (a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:
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> (1) To another position or other positions covered by this agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.
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> (2) In the event no position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other Supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other Supervisory Employe.
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> (3) Work incident to and directly attached to the primary duties of another class or craft, such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.
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> (4) Performance of work by employes other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this Rule (3-C-2) will not constitute a violation of any provision of this Agreement."

This dispute must be settled on the terms of the Rule quoted above, which is said to be peculiar to this Carrier and one other. Practices on other railroads, and awards based on agreements which do not contain this rule, may not be relied on. Both the Carrier and the Petitioner are bound by the quoted rule, and we may not go outside its provisions.

There can be no doubt that when the abolished positions were established in November and December, 1944, certain work was assigned to them, including some work which yard masters had theretofore performed, which work so transferred from yard masters was incident to and attached to the primary duties of yard masters; and that when these positions were abolished in August, 1945, a part of the work assigned to them was returned to

yard masters, not covered by the Clerks' Agreement. This act of the Carrier appears to us to be in plain violation of sub-section (1) of the quoted Rule 3-C-2 (a). That rule leaves the Carrier no power to assign any of the work of an abolished position to any employe not covered by the Agreement, so long as "other positions remain in existence, at the location where the work of the abolished position is to be performed." Other clerical positions under the Agreement were in existence when the positions of the Claimants were abolished, and some of the work which claimants had performed were assigned to such positions. This being true, we cannot escape the clear and express provisions of sub-section (1) of the Rule aforesaid.

But it is contended that under sub-section (3) of Rule 3-C-2 (a), the claim should be denied. We think this sub-section must be construed in connection with sub-sections (1) and (2) thereof. Under well-settled legal principles, the Rule must be construed so as to give effect, if possible, to all of its parts and provisions. Sub-section (1) covers cases where positions exist, which can do the work of an abolished position, at the same location; and sub-sections (2) and (3) covers situation where no such position exists. Under sub-section (2), a yard master could do the work of the abolished positions, provided, (1), there was no position remaining in existence, which, under the agreement could do the said work, at the same location; (2) where the remaining work could be performed in less than four hours; and (3) where such work was incident to his primary duty. Here, except for the provisions of sub-section (1), the yard master was entitled to perform the work of the abolished positions.

When we consider sub-section (3), we are met by the identical question disposed of by this Division in its Award No. 4043 this day made. We there held, in effect, that it could be given effect only in situations where sub-section (1) of the Rule 3-C-2 (a) was not applicable. The reasons on which that decision was made appear in said award, and need not be repeated; but they call for a holding that the agreement had been violated in the respects hereinafter stated.

The violation of the Agreement consists in the abolition by the Carrier of the two positions, Symbol B-96-G and B-97-G, on August 22, 1945, and it follows that Claimants should be compensated for each day lost occasioned by such violation. There does not appear to be any basis for the claim that they should be compensated at the overtime rate, as asserted in points (b), (c) and (d) of the claim; but we think the docket shows that the work of the abolished positions was of a character which called for its performance throughout the work day, and calls for compensation on an eight hour day basis, and at the prorata rate of pay. In view of our decision, point (e) of the claim is dismissed.

We cannot order that the abolished positions be restored, as the Carrier may be able to comply with the Agreement by assigning the work of said positions as required by sub-section (1) of Rule 3-C-2 (a). See Awards Nos. 1300, 3583 and 3906 of this Division. Of course, failure to comply with the Agreement, in some manner, would entail upon the Carrier the obligation to compensate the Claimants for future loss of work. The fact that one of the abolished positions has been restored, has no bearing on the dispute, except to reduce, in accordance with the facts, the compensation to which, under this award, the Claimants are entitled.

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 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 Carrier violated the Agreement to the extent, and in the manner set out in the Opinion.

AWARD

Claim (a) sustained; Claims (b) and (c) denied; claim (d) sustained at pro rata rate of pay; Claim (e) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.