Award No. 5232
Docket No. CL-5305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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:

Clerk E. F. Ewing, Office of General Baggage Agent, Passenger Traffic Department, Eastern Region, Philadelphia, Pennsylvania, be returned to service and compensated for all wage loss sustained, dating from April 1, 1949, until adjusted. (Docket T-5.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Claimant Ewing held a position in the Passenger Traffic Department, Eastern Region, Seniority District, as Statistician immediately prior to August 1, 1948, at a monthly salary of $327.32. As of August 1, 1948, Claimant Ewing was verbally advised that his position of Statistician would be abolished as of that date and was assigned to a regular routine clerical position at a rate of $243.32 per month.

On, or immediately prior to, February 1, 1949, Claimant Ewing was again verbally advised that this second position would be abolished and, as of February 1, 1949, he was assigned to another position with a monthly rate of $212.72.

On, or about March 15, 1949, Claimant Ewing was called into the office of Mr. A. C. Yorke, General Baggage Agent, and told that effective as of March 31, 1949, this third position would be abolished, and that there would

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 and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of 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 thereto 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 such action.

CONCLUSION.

The Carrier has shown that under the applicable Agreement between the parties to this dispute, the Claimant is not entitled to be returned to service nor to the compensation which he claims.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held an appointive position in the office of the General Baggage Agent. Effective March 31, 1949 that position was abolished. Employes claim that the claimant was arbitrarily denied the right to exercise his seniority on other positions and was dismissed from service without a fair and impartial hearing. In December, 1949 claimant filed application for pension under the Railroad Retirement Act and the same was granted.

Despite the very lengthy record in this docket the issues herein can be reduced to a consideration of the applicability of two rules to the facts of record. Rule 6-A-1 (the discipline rule) has no application to the situation with which we are confronted in this docket since the claimant being held out of service was a result of the abolishment of this position, not because of suspension or dismissal.

The applicable rules in the controversy are 3-F-1 and 2-A-7, which provide as follows:

> "3-F-1. An employe possessing seniority under the provisions of this Agreement, now filling or hereafter appointed to a position of Agent, Assistant Agent, Train Dispatcher, Yard Master, or Assistant Yard Master, or any position which, as of April 30, 1938, was not, or is not now subject to the application or exercise of seniority under the provisions of this or any other Agreement in the selection of the person to fill such position, shall retain and continue to accumulate seniority in the district from which appointed and, provided he reports for duty within thirty days after release from such position, he may exercise such seniority in accordance with the provisions of Rule 2-A-7."

> "2-A-7. An employe returning to duty after leave of absence, sickness, disability or suspension, shall return to his former position if available to him or may within five days select any position bulletined during his absence which was awarded a junior employe.

If during the time an employe is off duty account leave of absence, sickness, disability or suspension, his former position is abolished or is permanently filled by a senior employe, he shall exercise seniority under Rule 3-C-1.

Employes displaced from their regular positions by the return of an employe from leave of absence, sickness, disability or suspension, shall exercise seniority under Rule 3-C-1."

It is to be noted under 3-F-1 that the right of the employe to exercise seniority in accordance with the provisions of 2-A-7 is spelled out in permissive language. Accordingly, some overt act upon the part of the employe is necessarily required in order to convey to the Carrier an indication of the employe's desire to so exercise his seniority. In this instance, after the abolishment of his position in the Office of the General Baggage Agent, the claimant continued to show up for work in that office, insisting that he was entitled to a position in the General Baggage Department, a sub-department under the jurisdiction of the General Passenger Agent. However, positions in the General Baggage Department were not subject to bidding and bumping rules and hence the claimant could exercise no seniority on them. As a matter of fact, it is clear from the record that the only positions on which claimant could have exercised seniority were those in the City Ticket Office. In insisting upon a right to a position in the General Baggage Department, it cannot be held that claimant complied with the requirements of 2-A-7 since it is clear from the language of the rule that the burden is upon him to select a position upon which the rule operates. This conclusion brings us to a consideration of the remaining issue in the docket, i. e., whether or not the Carrier prevented claimant from exercising the displacement rights afforded him by reason of his seniority.

With respect to the issue last above mentioned, it is contended by the Employes that after the abolishment of his position, claimant was told by Carrier officer that there would be no further work for him. This, they assert was without qualification, so they interpret the same to mean no further work on the Carrier. The apparent theory of the Employes is that, under these circumstances for claimant to take steps under 2-A-7 selecting a position upon which to displace would have been a vain act, inasmuch as he had already been told that he was entirely through. Carrier insists that claimant was merely advised that there would be no further work for him in the General Baggage Department. The Employes' submission in this docket clearly indicates that claimant insisted on filling a position in the General Baggage Department, where, concededly, he had no rights. Under the circumstances it is a reasonable conclusion that such remarks as were addressed to him with respect to there being no further work for him referred to work in the department where he was seeking employment. Hence, it cannot be said that he was prevented from exercising such displacement rights as he had in other departments. Claimant not having exercised his displacement rights in accordance with the provisions of the Agreement, there is no basis for a sustaining Award.

It is unfortunate that a long career of faithful service such as the claimant has rendered, has ended on this somewhat sour note. However, we are bound by the terms of the Agreement and the facts of record and thereon we see no alternative but to deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of February, 1951.