Award No. 5971
Docket No. CL-5915

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier did not properly apply rules of our working agreement, effective April 1st, 1923, when they failed to classify and affix appropriate rates of pay to Stores Department Class 2 positions at Collinwood, Ohio, in violation of Rule 2 of our General Agreement; and

(1) That Carrier shall now be required to change the payroll classification of the positions involved from the present Class 2 classification to that of Class 1 classification, and

(2) That the Carrier shall now be required to allow these employes seniority datings in Class 1 as of the dates they first performed Class 1 service on positions held by such employes at the time the agreed upon joint check was made to determine the classification of such positions, in compliance with Rule 2 of our General Agreement, and further

(3) That the Carrier shall also be required to pay these employes the difference between what they were paid for their services performed under the classification of Class 2 employes and the rates established by agreement for clerical work as of the date of our last national wage increase agreement, effective February 1st, 1951, and the cost-of-living increase adjustments, effective April 1st, 1951 and July 1st, 1951.

EMPLOYES' STATEMENT OF FACTS: For many years, Gang Foremen, Helpers and Section Stockmen, employed by the New York Central Railroad in their Stationery Department and General Storehouse at Collinwood, Ohio, were classified as Class 2 employes.

From time to time, some of these employes took up the matter of reclassification, under the application of Rule 2 of our General Agreement, with the General Committee. In each case referred to the General Committee, studies were made and submitted to Carrier for recheck. Upon reaching an agreement on each of the cases, Carrier reclassified such positions and allowed these employes their Class 1 datings from the dates they were actually assigned to the disputed positions—including the adjust-

6. The claim is without basis in equity, is not supported by Agreement rules, and should be denied.

All evidence and data set forth in the ex parte submission have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is before us because of certain Class 2 employes at Collinwood, Ohio, not having been classified as Class 1 employes.

The record discloses that the work of a great number of employes at Collinwood was Class 1 work within the meaning of the Agreement. This was determined by a joint check which was begun in December, 1948, and which was completed in April, 1949. Subsequent to the latter aforementioned date there were several meetings between representatives of both the Carrier and the Organization. The purpose of the meetings being to reach an agreement regarding the reclassification of the positions involved and to properly place individuals from the Class 2 roster onto the Class 1 roster. No such agreement was reached and the case is now before us with the claim being for a change in payroll classification and that the Carrier allow the employes seniority datings in Class 1 as of the dates they first performed Class 1 service on positions held by such employes at the time the agreed upon joint check was made to determine the classification of such positions, in compliance with Rule 2 of the General Agreement. A monetary claim was also made which has been withdrawn from consideration of this Board by agreement of the parties.

The main question for our determination is whether, under the terms of the agreement, the Carrier should be ordered to dovetail the seniority of the Class 2 employes, here involved, with those employes now shown on the Class 1 Roster.

The Agreement Rule 2 defines a Clerk position. Clerks are Class 1 employes, as set out in the Scope Rule.

Rule 3 provides that "Seniority begins at the time the employe is assigned to a position in the class of service covered by a seniority roster."

Rule 4 is the promotion rule and states that "Promotion shall be based on seniority, ability and fitness; ability and fitness being sufficient, seniority shall prevail."

Rule 9 provides that new positions or vacancies of 30 days or more in Class 1 shall be promptly bulletined.

Rules 2 and 3, standing alone, would seem to give weight to the Organization's position, but examined along with Rules 4 and 9 the claim, as presented, becomes untenable.

Rule 2 gives the right to the Organization for a reclassification of positions, but looking to Rule 9 we determine that in reclassifying the positions without bulletining would prejudice the rights of other employes under the agreement. Rule 4, the promotion rule, comes into play following the bulletining of a position. To establish a new position, and that is what the proposed new classification would amount to, would be contrary to the rules of agreement in the absence of proper bulletining and application of seniority to bidding.

The retroactive dovetailing of seniority, as we are here asked to do, may not be done under the terms of this agreement.

We recognize that we are without authority to amend present rules or write new ones into the agreement. It is our opinion that a sustaining award

here would write exceptions to the rules which would amount to more than an interpretation of existing rules.

The conditions, which are here complained of, existed in some degree for many years. During this time considerable negotiations took place. Both parties still have the right to negotiate changes in the rules in order to make them fit this situation.

Part (1) of the claim is well taken. Under the rules the Carrier is obliged to reclassify the positions.

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.

AWARD

Part (1) of claim sustained.

Part (2) of claim denied.

Part (3) of claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1952