Award No. 6024
Docket No. CL-6014

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, 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) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rule 3-C-2, when it abolished positions of Crew Callers, rate of pay $236.17, located at the Yard Office, Mingo Junction, Ohio, effective October 19, 1949.

(b) The position should be restored in order to terminate this claim and that W. L. Hootman, Theresa Kucan, Mike Kachur, Jr., and W. L. Lewis and all other employes affected by the abolishment of this position should be restored to their former status and be paid a day's pay at the appropriate rate as a penalty in accordance with Rules 4-A-1, 4-A-2, 4-A-3, 4-A-6 and 4-C-1, and be reimbursed for all expense sustained in accordance with Rule 4-G-1(b). (Docket C-594)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case hold positions 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, amended September 1, 1949, 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.

The claimants in this case held positions of Crew Caller at the Yard Office, Mingo Junction, Ohio. Such positions are Group 2 positions and are fully covered by the Scope and all of the Rules of the Rules Agreement. The incumbents, claimants in this case, have seniority standing in Group 2 on the Seniority Roster for the Panhandle Division Seniority District.

OPINION OF BOARD: This claim was progressed to and denied by the official designated by the Carrier to handle and finally pass upon the instant dispute on a joint factual submission, hence the basic facts giving rise to the controversy as therein set forth are not in question and must be accepted as controlling our disposition of the cause. Such statement reads:

"Immediately prior to October 18, 1949, the force in Crew Dispatcher's Office, Mingo Junction, Ohio, was as follows:

Name	Position	Tour of Duty
L. A. Risdon	Crew Dispatcher G-79	1st trick
R. L. Gregory	Crew Dispatcher G-80	2nd trick
R. T. McPeek	Crew Dispatcher G-81	3rd trick
F. B. Poots	Crew Dispatcher Relief	Various
W. L. Hootman	Crew Caller	1st trick
Theresa Kucan	Crew Caller	2nd trick
M. Kachur	Crew Caller	3rd trick
W. L. Lewis	Crew Caller Relief	Various

"The third trick crew caller position was abolished, effective October 18, 1949, and the first trick, second trick and Relief Crew Caller positions were abolished, effective October 19, 1949.

"The duties of the abolished positions, which consisted of calling engine and train service employe, were assigned to the Crew Dispatchers on each trick, who performed the Crew Caller work incident with their regular duties. When necessary to leave the office to make a call, the Crew Dispatchers locked the office, made the call and returned to the office to continue their regular duties.

"The four abolished positions were re-established, effective December 3, 1949.

"Claim as outlined in the subject has been properly presented and progressed in accordance with the provisions of Rule 7-B-1."

Preliminary to a discussion of the issues involved it should be noted that the claim as denied by the Carrier and now before this Board, although specifying Rule 3-C-2 in particular, is not limited to such rule but is based upon the premise Carrier violated **the rules** of the Agreement when it abolished the Crew Caller positions in question. It should also be pointed out that such positions were re-established effective December 3, 1949, with the result the period of time covered by the claim dates from October 18, 1949, to December 2, 1949, incl., and the question of restoring such positions is no longer in issue.

All applicable rules of the Agreement are set forth in the submissions of the respective parties and for that and other reasons we do not deem it necessary to quote them at length. In a summary way it can be said the scope rule provides for 2 Groups of employes, namely, Group 1 and Group 2; Rule 3-B-1(a) provides that separate seniority shall prevail by Groups as such Groups are defined in the scope rule; Rule 3-D-1(a) provides that separate seniority rosters shall be maintained by Groups, and Rule 3-C-2(a) provides that when a position covered by the Agreement is abolished the work previously assigned thereto which remains to be performed will be assigned in accordance with certain subsections following, subsection 1 providing the work may be assigned to another position or other positions covered by the Agreement when such positions remain in existence at the location where the work of the abolished position is to be performed.

The parties agree that under rules of the Agreement in force and effect the position of Crew Dispatcher is a Group 1 position and that of Crew Caller is a Group 2 position.

In the interest of time and space consideration should be given at the outset to the import to be placed upon rules of the Agreement to which we have referred.

With scope rule and seniority rules such as we have mentioned this Board has held on numerous occasions that in the absence of rules in agreements clearly to the contrary seniority rosters by districts prevent Carriers from turning the work of those on one district seniority roster over to those of another even if the employes concerned are covered by the same Agreement (see Awards 973, 1808, 2354, 3656 and 4076). In other Awards, to which we adhere, it has consistently held that the rule is equally applicable to cases where—as here—Group Rosters were involved (see e.g. Awards 1306, 2585, 3582, 4385, 5091, 5413, 5590 and 5895).

The facts of record make it clear the work here in question had been assigned to regularly established Crew Caller positions which were Group 2 positions. Therefore, we have little difficulty in concluding that in the absence of some other rule in the Agreement authorizing its action the rules last above mentioned preclude Carrier from assigning the work in question to Crew Dispatchers who held seniority rights in an entirely separate and distinct seniority group.

The Carrier asserts it has the right to cross seniority group lines under and by virtue of the provisions of Rule 3-C-2(a) and subsection 1, **supra.** Here again we experience little difficulty in concluding this rule gives the Carrier the right, if and when a position is **properly** abolished, to assign its remaining work to another position covered by the Agreement when such other position remains in existence at the location where the work of the **properly** abolished position is to be performed. Even so we are unable to agree with its assumption that such rule gives it the unqualified right to abolish a position arbitrarily or without regard to the status of its work. Otherwise stated, our view is that the authority to cross group lines conferred by the rule can be exercised only when a position has been **properly** abolished in conformity with other rules of the Agreement. In our opinion to hold otherwise would wholly ignore, render meaningless, and make a sham of the seniority rules. The correctness of this view, we belive, is definitely indicated by Rule 4-F-1 of the Agreement prohibiting the abolishment of established positions and the creation of new ones covering relatively the same class of work for the purpose of evading application of other rules of the Agreement. We are not impressed with, and hence will not labor, a contention advanced by Carrier to the effect Rule 4-A-3, dealing with the reduction of working days per week and providing such rule shall not prohibit the abolition of a position at any time, gives it the unqualified right to abolish positions without regard or adherence to the principles applicable to proper abolishment of a position to which we have heretofore referred and shall presently give further consideration.

Thus it becomes clear the fundamental and all decisive issue presented in this case is whether the Crew Caller positions at Mingo Junction were properly abolished. Decision of such question, as we understand it, depends upon whether a substantial part of the duties of the purported abolished positions had disappeared and in addition whether the Carrier actually intended to abolish such positions. See Award 3884 and decisions there cited where, recognizing the prerogative of management to abolish a position where its work had disappeared, either entirely or substantially, we so held.

In the instant case the Carrier, in neither its original submission nor in any of its subsequent statements, has assigned any reason for abolishing the positions in question nor shown that their work had disappeared or had been substantially reduced. Instead, on the property and in its submissions,

it chose to base its defense wholly upon the provisions of Rule 3-C-2(a). On the other hand the agreed upon statement of facts, which as we have indicated must be accepted as correct and controlling, discloses that 4 Crew Caller positions, in fact all positions of that character at Mingo Junction, were discontinued within a period of two days; that the duties of those positions which consisted of calling engine and train service employes were assigned to and performed by Crew Dispatchers who held seniority in an entirely separate and distinct seniority group, and that within a space of less than a month and one-half the four discontinued positions were re-established on the same location. In the face of that situation, and applying the test laid down in Award 3884 for determining the question, we feel impelled to hold that the involved Crew Caller positions were improperly discontinued and hence not in fact abolished. The result is that under the facts of this particular case the Carrier had no right to cross group lines and assign the work in question to Crew Dispatchers under the provisions of Rule 3-C-2(a), **et seq.**, because the prerequisite necessary to make it operative, namely, proper abolishment of the Crew Caller positions, did not exist and its action in doing so was in violation of the seniority rules of the Agreement to which we have heretofore referred.

In an obvious effort to forestall the result just indicated the Carrier's representative handling this cause before the referee directs attention to Service Order No. 843 of the Interstate Commerce Commission, placing restrictions on coal burning passenger service locomotive mileage, between October 25, 1949, and December 25, 1949, because of a work stoppage in the bituminous coal fields, also to Award 5937 wherein a claim against the Pullman Company, based on discontinuance of certain trains on the Atlantic Seaboard Lines because of such order, was denied. There is nothing in the record of proceedings, either on the property or before this Board, indicating Carrier's action in the present case was due to conditions resulting from such order or is defended on that premise. Under such conditions we cannot speculate as to the facts or supply Carrier with a defense which it did not see fit to make itself. On that account neither the Order nor the Award are entitled to weight or credence under the existing facts and for that reason have been given no consideration in reaching our decision.

Except to mention them little time need be spent on arguments to the effect this claim is too general in nature, in that it seeks recovery for all other employes affected as a class, and is therefore improperly before the Board because not filed in conformity with Rule 7-B-1. Similar contentions advanced by this (see Award 5630) and other (see Awards 5078 and 5107) Carriers have long since been rejected. Besides the joint statement of the parties, quoted at the beginning of this opinion, expressly states the Claim was presented and progressed in accord with the provisions of such rule.

The instant claim is in the nature of a penalty for a violation of the Agreement for improperly discontinuing the four Crew Caller positions in question. We have some difficulty in concluding that any one of the rules set forth in paragraph (b) of the Claim specifically prescribes the appropriate penalty to be assessed and the record is devoid of facts showing what resulted after the Carrier's action so far as assignment of employes is concerned. It is certain the facts presented do not sustain the Claimant's contention additional expenses on account of whatever changes were made are payable under the provisions of Rule 4-G-1(a) and (b). Even so the fact, as we have found, that such positions were discontinued and the work thereof assigned to employes in another separate and distinct seniority group in violation of the rules of the Agreement compels the assessment of a proper penalty. That in our opinion, under the confronting facts and circumstances, will be accomplished by requiring the Carrier to pay the four employes specifically named in the claim what they would have received if their positions had not been abolished for the period of time in question.

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 Agreement was violated.

AWARD

Claim (a) sustained. Claim (b) sustained but only to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of November, 1952.