Award No. 7787
Docket No. CL-7646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

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

(1) The Carrier violated the terms of the currently effective Agreement when, effective January 11, 1954, it discontinued a Clerk-Messenger position at Scranton Yard and unilaterally distributed the regularly attached duties assigned to such position, to employes in two (2) separate seniority districts.

(2) The Carrier shall be required to restore said position to the seniority district embracing the employes in the Scranton Yard and that all employes adversely affected by the unilateral action of the Carrier shall be reimbursed for all monetary losses sustained as a result thereof, retroactive to January 11, 1954—and up until such time as the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Among the many positions fully covered by the scope and operation of the Clerks' Agreement falling within the confines of the prior seniority roster embracing employes at the Scranton Yard, Scranton, Pennsylvania, one (1) titled Clerk-Messenger held by John Barry, hours of service 10:00 A. M. to 6:00 P. M., exclusive of Saturdays and Sundays, rate of pay $13.66 per day, was discontinued, effective January 11, 1954. The duties attached to said position were as follows:

Duties of Clerk-Messenger job before abolition

10:00 A. M. Pick up all mail at Scranton Yard Office and deliver to Baggage Room and various offices in Scranton Passenger Station. Wait for train No. 2 for mail and pick up all Bloom, Scranton Yard and Taylor mail and take to Scranton Yard Office, arriving between 11:15 A. M. to 11:30 A. M.

11:30 A. M. to 1:30 Worked as clerk in Scranton Yard Office assisting other clerks.

1:30 P. M. Pick-up all the mail at Scranton Yard Office for Taylor and deliver to Taylor Yard. From there to Moffatt Colliery

OPINION OF BOARD: Paragraph (1) of Organization's claim reads:

> "(1) The Carrier violated the terms of the currently effective Agreement when, effective January 11, 1954, it discontinued a Clerk-Messenger position at Scranton Yard and unilaterally distributed the regularly attached duties assigned to such position, to employes in two (2) separate seniority districts."

Although not named in the claim, the docket reveals the claimant to be one John Barry.

There are in evidence an Agreement between the parties dated January 1, 1939 and a Supplemental Agreement effective September 1, 1949.

For the purposes of this Opinion, suffice it to say the applicable Agreement recognizes, inter alia, a clerk as being a Group 1 employe and a Messenger as being a Group 2 employe.

And also for the purposes of this Opinion, the applicable Agreement established and recognized as of January 1, 1939 a Scranton Division Seniority District, being a combination of the Superintendent's Office, Freight Station and Yard Office at Scranton, plus others, which hitherto had been separate and distinct seniority districts.

The net effect of the creation of this new Scranton Division Seniority District was two-fold: (1) new employes hired after January 1, 1939 accumulated seniority on the new Division-wide basis, while (2) employes holding seniority on the prior seniority rosters continued to hold such prior rights to positions covered by such rosters.

Before treating with the incident of January 11, 1954, when discontinuance of a Clerk-Messenger position led to the claim here before us, we must revert to the date of December 7, 1951 when said position was created by bulletin—a date, incidentally, 13 years after the establishment of Division-wide Seniority.

The title of the position was Clerk-Messenger, a combination of Group 1 (clerical) and Group 2 (messenger) work.

The Bulletin was directed to "All Clerks", (Group 1) and its opening phrase was: "The following vacancy exists among the **clerks** on this Terminal. Group 1. 10:00 A. M. to 6:00 P. M., Clerk-Messenger, Scranton Yard * * *".

Carrier points out that when bulletined, the position was classified as Group 1 because the incumbent was expected to regularly devote not less than four (4) hours per day to clerical work. Carrier further maintains that the Agreement contemplates that positions may perform duties of both Groups 1 and 2, but that the payroll classification will be determined by the preponderance of the work assigned; thus Barry's position was classified in Group 1 "and the Group 2 messenger work was incidentally assigned to his position because he was going between the points anyway in performing his clerical duties."

The record clearly indicates that Barry was awarded the position in December of 1951 because he had Group 1 (clerical) Seniority on both the Division-wide basis and his prior Seniority district roster.

Organization offers no complaint against Carrier's abolition of the Clerk-Messenger position; nor against the fact that Carrier assigned the clerical work of the abolished position to Group 1 employes covered by the Clerks' Agreement; but it does base its claim on the assertion that when the position was abolished, the messenger work attaching thereto was assigned to Group 2 employes in separate seniority districts—employes, incidentally, covered by the Agreement here applicable.

But Carrier offered irrefutable evidence that Barry did not have any Group 2 (messenger) Seniority on either a prior roster basis or a Division-wide basis when he was awarded the position. Rule 25, on which Organization relies so heavily, plainly states that Employes shown on prior seniority rosters will hold prior rights to positions covered by such prior seniority rosters. Barry's prior rights were Group 1 (Clerical) rights—not Group 2 (messenger).

Organization states it "has no dispute with Carrier insofar as its right to abolish positions covered by the Agreement and the distribution of work resulting therefrom to other employes covered by the same Agreement, provided such distribution is made to employes in the same seniority district and in line with the wage provisions contained in the working schedule."

Organization makes the argument that Award 99 of this Division, rendered without the aid of a Referee (similarly Awards 973 and 975) held that "seniority districts once established by understanding and/or agreement can only be changed by agreement between the parties."

Organization notes that when the abolished position was originally bulletined by Carrier it was designated "Clerk-Messenger, Scranton Yard". But we must also observe that the same bulletin was directed to "ALL CLERKS", which would support Carrier's contention that the preponderance of the work assigned to the position was of a clerical nature, and the position was classified as Group 1, which is clerical. Carrier noted the "messenger work was incidentally assigned to his position because he was going between the points anyway in performing his clerical duties."

We must also reiterate that Barry held only Group 1 (clerical) Seniority on the prior seniority roster (Scranton Yard) and on the Scranton Division. He did not hold Group 2 (messenger) Seniority on either.

When Carrier abolished the Barry job, it assigned the clerical duties of the position to Group 1 clerks in the Scranton Yard Office. Organization has "no dispute" with Carrier until it assigned the messenger work incident to the abolished Clerk-Messenger position to Group 2 (messenger) employes "in the Scranton Division Seniority district"—employes covered specifically by the same Agreement under which Organization here seeks relief for Barry. The two employes assigned the messenger work from the abolished position hold Group 2 (messenger) seniority.

Organization cites numerous Awards in support of its position in addition to Award 99, hereinbefore cited. One of these is Award 3746 (Wenke), a portion of which from Award 1808 reads:

> "* * * it is well settled that a carrier in discontinuing a position not only may not assign the work to those outside the scope of the agreement but is not permitted to assign it even to those covered by the agreement if they hold seniority rights exclusively in another seniority district." (See also Awards 385, 973, 2354, 3271, 3506 and 3656)

However, an examination of the facts in Award 3746 reveals two points at variance with the case here.

In 3746, seniority was solely by districts, no evidence of Division-wide seniority being found; and, in 3746, the claimants in question all held Group 2 (messenger) Seniority, while in the instant case Barry held only Group 1 (clerical) Seniority, which permitted him to originally bid on the position in question because it was, from the evidence, bulletined solely to "all clerks". Barry held no Group 2 (messenger) Seniority, district or division.

Carrier points out that "messenger work does not fall within Group 1 (clerical positions) but falls within Group 2." The latter specifically mentions 'messengers'. There is no rule in the Agreement that ordains that messenger

work between various offices may not be performed by any employe or messenger, whether in or out of his prior Seniority district. To argue that only an employe from one seniority point may carry papers between offices is to argue the ridiculous and is contrary to what has been the practice for years. Such a far-fetched view would mean that no office could send papers to another except by its own messenger, even where a messenger from another office was on hand and about to return to that office. The Agreement never contemplated such absurdities.

> "In fact, in this very case, Mr. Barry performed messenger (mail carrying) service between offices in different seniority points such as between Scranton Yard and Scranton Baggage Room and between Scranton Freight House and Scranton Yard Office."

The above statement is taken from page 21 of the record, and a careful review of the remainder of the record as well as Organization's presentation in argument fails to reveal any denial of the statements made in the above quotation.

In summary, then, we have an act by Carrier on January 11, 1954 abolishing the position of Clerk-Messenger. Its 3 principal points are:

1. Carrier abolished the position. Organization finds no fault therewith.

2. Clerical duties of abolished position were assigned to Clerks covered by applicable Agreement, and, again Organization finds no fault therewith.

3. Messenger work of abolished position was assigned to employes having Group 2 (messenger) Seniority in the Scranton Division Seniority district. Organization claims Carrier thereby violated Rules 23(a), 25 and 28(a).

On the basis of the record we must and do hold that Organization has failed to prove that the Agreement has been violated.

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 has not been violated.

AWARD

Claim (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 13th day of March, 1957.