Award No. 8500
Docket No. CL-7529

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1) Carrier violated and continues to violate the Clerks' Rules Agreement when, effective January 2, 1951, it abolished clerical position No. 196 at Woonsocket, South Dakota, and assigned the remaining duties of that position to the Agent and Operator, both of whom are employes covered by another rules agreement;

2) Carrier shall restore the clerical work associated with Position No. 196 to the Clerks' Agreement and the employes covered thereby;

3) Employe G. B. Flattum shall be compensated for all loss suffered as result of such abolishment; and

4) Any and all other employes affected by the abolishment of Position No. 196 shall be compensated in full for all loss suffered as result thereof from January 2, 1951 until the work of that position is returned to the scope of the Clerks' Rules Agreement and the employes covered by that Agreement.

See Award 8408 for Statements of Facts and Positions of the Parties.

OPINION OF BOARD: In Award 8408 this Division ruled that the Telegraphers' Organization had third-party interest in the instant dispute and was therefore entitled to notice and opportunity to be heard, as required by the Federal Courts' interpretation of Section 3, First (j) of the amended Railway Labor Act.

The Telegraphers' Organization, duly notified on August 5, 1958, of a hearing to be held on September 9, 1958, declined to appear at said hearing (which was held as scheduled) and stated in letter of August 11, 1958, that it was not involved in the case here before us. Accordingly, the case is now before this Division on its merits.

The essential facts in this case do not appear to be at issue. From at least 1930 until May 3, 1947, an Agent and a Clerk were employed on the first shift in Carrier's station at Woonsocket, South Dakota. As of the latter date the Clerk's position was abolished; but it was restored as Clerical position No. 196 as of January 2, 1948, following protest by the Organization. In October, 1950, Carrier discontinued two passenger trains and changed two freight trains from daily to tri-weekly service. Effective January 2, 1951, the Clerk's position at Woonsocket was again abolished.

It appears from the record that prior to the abolition of said position (1) the Clerk performed a few duties by himself, e.g., checking the yard and abstracting; (2) the Agent performed certain other duties exclusively, e.g., making out express reports and pick-up and delivery reports; and (3) both performed many other duties together and interchangeably, e.g., checking and delivering freight and selling tickets.

The Organization contends that by said abolition Carrier violated the third paragraph of Rule 1(e), which reads:

> "Positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57." (The latter is the rule requiring negotiation and agreement for changes in existing agreements.)

The Organization does not ask for re-establishment of the Clerk's position as such. The claim asks that the work associated with former Clerical position No. 196 be restored to the Clerks' Agreement.

The issue that the Board is here asked to determine should be clearly understood. The Board is not asked to decide whether given (say) two positions not under the Clerks' Agreement and (say) two positions under said Agreement, Carrier has the right to abolish one of the clerical positions when a decrease of railroad business results in such a diminution of clerical work that one less clerical position is needed. Nor is the Board here required to rule whether, given one or more positions not under the Clerks' Agreement, given only one clerical position at the location, and given the fact of full-time clerical work previously done exclusively by its occupant, Carrier has the right to abolish same if all the work previously associated therewith has for any reason disappeared. Nor is the Board asked here to find whether, given one or more positions not under the Clerks' Agreement and one position under said Agreement and given complete interchangeability of work between or among the positions, Carrier has the right to abolish the clerical position, following a decline in business. What the Board must determine here is whether, given the facts (as above set forth) of the previous relationships between the Agent's position not covered by the Clerks' Agreement and Position No. 196 covered by said Agreement and given Rule 1(e), Carrier had the right to abolish the Clerical position.

We think not. When the Carrier abolished Clerical Position No. 196, at least some of the work previously associated exclusively with said position remained to be performed; and after said abolition it was performed by the Agent. The work of the clerical position was not wholly abolished; at least some of it was transferred to the Agent's position, i.e., it was removed from the scope of the Clerks' Agreement and placed under the scope of the Telegraphers' Agreement. Then, under this Board's rulings in numerous Awards

(e.g., 5785, 5790, and 7372) interpreting this same Rule 1 (e) or similar rules and holding that work is the essence of positions, said Rule prohibited the Carrier from acting as it did in the instant case. In the absence of the language of this Rule as interpreted by this Division, the so-called "ebb and flow" principle would apply and Carrier's behavior would be judged blameless. But said language and interpretation compels the conclusion that Carrier's abolition of Clerical Position No. 196 in the manner it did constituted violation of said Rule. Accordingly, Claims (1) and (2) have merit and are to be sustained.

As to Claim (3) which asks that employe Flattum, the occupant of Clerical Position No. 196 when it was abolished, be compensated for all loss suffered by him because of said abolition, the Board here rules, as it has on innumerable occasions, that any employe adversely affected by the violation of a rule must be made whole for whatever monetary loss he suffered from such violation. Punitive damages are not ordinarily approved by the Board. This is the general principle. In the instant case the Organization has not established any particular loss by Flattum. Carrier, on the other hand, has stated that after the abolition of the Woonsocket clerical position Flattum exercised his seniority to take a higher-rated clerical position at Aberdeen and that thereafter he gave up said position to take a Telegrapher's position, same being subject to another agreement. Accordingly, the Board rules that Flattum is entitled to compensation for only those specific net losses which the Clerks' Organization, in conference with Carrier, is able to establish for the period of January 2, 1951 to the date when Flattum ceased to hold seniority under the Clerks' Agreement.

Claim (4) is made in behalf of unnamed employes whose losses, if any, were not particularized by the Organization. The Board is not disposed to award anything to said employes; and, accordingly, Claim (4) is to be denied.

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 as set forth in the Opinion hereto.

AWARD

Claims (1) and (2) sustained.

Claim (3) sustained to extent set forth in Opinion.

Claim (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October, 1958.

DISSENT TO AWARD NUMBER 8500, DOCKET NUMBER CL-7529

Awards 5785, 5790 and 7372 are cited as examples of this Board's rulings interpreting Rule 1 (e) or similar rules and holding that "work is the essence of a position." These awards, like Award 8500, which recite the platitude that "work is the essence of a position" are grievously in error in the unwarranted conclusion drawn therefrom that such rules prohibit Carriers from doing what was done in the instant case. That part of Carrier Members' dissents which pertains to the merits of the claims involved under the rules in these awards is adopted and made a part of this dissent.

The Employes' proposal, from which Paragraph (e) of Rule 1 resulted in the instant case, contained the words "positions or work". The parties did agree that nothing in the Agreement would be construed to permit the removal of positions from the application of the rules without agreement, but they did not similarly agree to restrict the removal of work from the application of such rules. The words "or work", proposed but omitted from the rule as agreed to by the parties, may not properly be added to the rule under the guise of interpretation. This Board far exceeds its authority when, in effect, it virtually amends the rule, by interpretation, to include that which the parties purposely omitted therefrom when the rule was negotiated.

"Work" may attach to the term's position, place, situation, office, post, job, berth, billet, etc., to a greater or lesser degree, but nothing in the Agreements, or elsewhere, prohibits the Carriers from adding to or taking away work from a position and, similarly, nothing precludes adding to or removing work from application of the Agreement rules, in the absence of probative evidence that the particular work involved is exclusively within the purview of the applicable Agreement.

A striking characteristic of railroad labor agreements is that they gravitate primarily not around the work, but around the position. Positions, not work, are established or discontinued; are advertised, bid for and awarded. Seniority is exercised not on work but on positions. Hence, the conclusion that Rule 1 (e), which specifically relates to positions and not to work, prohibited the Carrier from acting as it did in the instant case, is erroneous.

All work at the station involved here is common station work similar to that performed at the many agencies on the same seniority district as well as on other seniority districts of the Carrier where only one employe is assigned. It definitely is not work exclusively within the purview of the Clerks' Agreement as measured by any specific rule, or by practice, tradition or custom under the rules. Accordingly, nothing prohibited the Carrier from acting as it did in the instant case.

Awards such as this one and the others cited therein increase the difficulties confronting Carriers in their struggle for survival.

For these reasons, we dissent.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp