Award No. 8526
Docket No. CL-8096

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

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

1. The Carrier violated the provisions of the Clerks' Agreement when it abolished Clerical Position Symbol B-1, owned by Clerk H. W. Kendrick, and assigned the duties of the position to:

(a) Employes owning lower rated positions and to Extra Clerks, and

(b) To Employes who are assigned to excepted positions, and

2. The Carrier shall restore Clerical position, Symbol B-1, and shall compensate Clerk H. W. Kendrick, the difference between $369.43 the rate he had been paid, and the rate of $343.36 per month, that he now earns, starting on October 22nd, 1954, the date that Clerical Position Symbol B-1, was abolished, and each day thereafter until the violations are corrected, and

3. The Carrier shall pay the rate of $369.43 per month, for each day and to all other employes who are required to perform the duties of Clerical Position Symbol B-1, starting on October 22nd, 1954 and each day thereafter until the violations are corrected, and

4. The Carrier shall pay all affected employes who were displaced account of Clerk H. W. Kendrick exercising seniority by bid or bump, for all loss of pay, starting on October 22nd, 1954 and each day thereafter until the violations are corrected.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective July 1, 1945, with revisions as indicated therein, covering clerical, other office, station and storehouse employes, between this Carrier

involved depriving the incumbents of two "excepted" positions of the assistance which they had previously received from the incumbent of the abolished position in question, i.e., Clerical Position, Symbol B-1.

In view of the facts presented and for the reasons outlined above, this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The controversy before us centers around the discontinuance of Clerical Position Symbol B-1 on October 22, 1954. During the eight or nine year period beginning shortly after the close of World War II and continuing up to the date the position in question was abolished, its duties consisted in (1) registering all unemployment claims and handling correspondence relating to retirement annuities, (2) maintaining and assembling information for Public Service Commission reports, (3) working with the Head Clerk in making up payrolls for the Division Operator and (4) preparing Statistical Freight Reports and handling telephone bills. Effective October 22, 1954, the Carrier abolished the position and assigned the duties mentioned in (1) and (2) above, which account for over eighty percent of the working time required by the abolished position, to clerical employes who received pay substantially below that prescribed for Clerical Position Symbol B-1. The remaining duties, those referred to in (3) and (4) above, were assigned to employes excepted from the Petitioner's Agreement with the Carrier.

On the basis of these facts, the Petitioner charges that the abolition of the B-1 position and assignments of its duties to lower-rated and exempted employes constitute violations of its Agreement with the Carrier. The latter replies that its actions were well justified by the Agreement and economic considerations.

It is well-established that, in the absence of limitations imposed by law or a collective bargaining agreement, it is the prerogative of Management to abolish a position if a substantial part of the work thereof has disappeared. See Awards 6022 and 6945. We here reaffirm that principle, particularly where the discontinuance of positions is essential to a program of good management and sound economy. Nevertheless, where obligations were imposed by collective bargaining agreements with respect to job classifications and their compensation or other incidents, the contracting parties must live and comply with these obligations, unless they are changed by mutual agreement.

In the present case, the Agreement provides for the rating of positions. Section 4-G-1 (a) of the Agreement reads as follows:

> "Positions (not employes) shall be rated and transfer of rates from one position to another shall not be permitted."

Section 4-G-2 provides:

> "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules."

From an examination of these provisions, it is apparent that if the Carrier unilaterally abolished a position and assigned its services to a new

lower-rated position, the Agreement would be breached. This is nonetheless true if the Carrier distributes the work of the abolished position among several employes to be performed in addition to their duties in existing positions, even though a new position is not created. It is a familiar proposition of law that one may not accomplish by indirection what he is forbidden to do in a direct manner. The positions covered by the Agreement consist of certain definite duties and on the basis of these duties ratings and other incidents have been determined. If these duties could with impunity be assigned to lower-rated or excepted positions, then a very fundamental basis of the Agreement would fall and be emasculated. This is not to infer that where the volume of work in a position is shown to have substantially decreased, the Carrier could not properly abolish the position.

It is not necessary that all or almost all the duties of a position disappear but, in the present case, there is not an iota of evidence that the work requirements of the abolished position substantially decreased. On the contrary, it affirmatively appears that right up to the day it was abolished, its incumbent was required to work at it full time.

The Carrier at no time consulted or notified the Petitioner regarding so vital an element of collective bargaining as the discontinuance of a position until its abolition and the assignments had been accomplished. The Carrier claims that a questionnaire procedure adequately protects the employes but the use of this procedure was not suggested until after the acts here complained of had become accomplished facts.

The Carrier also argues that there is no evidence of a substantial increase in the workload of employes assigned some of the duties of the abolished position. While that point could have some merit in a proper setting, it lacks force here. It is a far more compelling circumstance that the work time required by the position in question did not decrease and its incumbent continued to work full-time right up to the time it was abolished. We also note that, after the work had been transferred, it was performed by four or more employes with extra help from time to time.

In the light of the above related circumstances, it is clear that the assignments of duties to lower-rated employes in the present case constitute a violation of the Agreement. Awards 4932, 751 and 7321. This conclusion is not inconsistent with Awards 5486, 6187, 6839, 6945, 7073 and other citations on which the Carrier relies, since in each of those cases, unlike the situation before us, it was established that the duties of the abolished positions had been materially reduced prior to their discontinuance. That we are not free to consider whatever equities exist in favor of the Carrier is axiomatic; we are limited to the Agreement and record before us.

The transfer of B-1 work to excepted positions also was in breach of the Agreement. The Scope section thereof stipulates that "The transfer of work or a position now subject to all the rules of the Clerks' Agreement to a position exempted from certain rules of the Agreement will not be made except when such action is agreed to by the Manager of Personnel and the General Chairman." The record is clear that the work so transferred was part of the position abolished and that neither the General Chairman nor his representatives agreed to the transfer nor were even consulted or notified before they were unilaterally effected by the Carrier. The nature of those duties transferred and the fact that they had formerly been performed by the excepted positions in question are not material. We are satisfied that they were part and parcel of the position abolished and that the time required for their per-

formance, whether twelve and one-half percent, as contended by the Carrier, or more, was not negligible. Under the circumstances, they could be removed from the B-1 position only by agreement of the contracting parties or if the duties of that position had materially decreased. See Awards 8203, 751, 7351, 1384, 6796.

It must accordingly be held that the Carrier violated the Agreement both by assigning some of the work of the higher-rated position to lower-rated employes and by transferring the remaining duties to excepted positions. We will not order the reinstatement of the position abolished (see Awards 8103, 6967 and 5785) but, with that exception, will require that its incumbent, Clerk H. W. Kendrick, be afforded the relief requested by the Petitioner in paragraph numbered 2 of its Statement of Claim.

As to the Petitioner's claim that the lower-rated employes assigned some of the B-1 duties should get the B-1 rate, we find that the record is not sufficiently clear as to what proportion of their time is now devoted to B-1 work and other material respects. On the basis of this record, there is not sufficient reason to sustain this portion of the claim and it is denied. It is important to sound labor management relations that remedies we direct because of violations be final, unambiguous and not susceptible to further dispute; accordingly, all phases of a claim, whether it be of the penalty type or otherwise, should be adequately presented.

While also not as completely presented as might be desirable, Petitioner's fourth claim, as set forth in paragraph numbered 4 of its Statement of Claim, is sufficiently clear and readily ascertainable, although the employes affected are not specifically named. Awards 5078, 7622, 7713, 6421 and 2569. This remedy logically follows the violation and must be sustained.

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 Employe involved in this dispute are respectively carrier and employe 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

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1958.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 8526

Docket No. CL-8096

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: The Long Island Rail Road Company.

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

An interpretation has been requested regarding Award 8526. The particular point in question relates to the period of compensation for Clerk Kendrick, it being the Carrier's claim that it discharged its obligation with respect to this item by compensating Kendrick for the period beginning with the date his position was abolished and ending on the date Award 8526 was issued. In our opinion, the termination date suggested by the Carrier is patently artificial and we can not subscribe to the Carrier's position in that regard.

Award 8526 appears, on reexamination, clear and unambiguous. It found that the Carrier had violated the terms of its contract with the Organization by unilaterally eliminating Kendrick's position and assigning its duties to lower-rated and excepted positions, although the parties had expressly agreed by contract upon the rating and evaluation of that position and upon safeguards for the protection of such ratings. This contract violation is clear and not at all insubstantial or technical.

Under these circumstances, we had no alternative but to find a contract violation and to sustain the Union's claim with respect to Kendrick and the employes he displaced. Prior awards made it clear that we could not be swayed by the equitable considerations that might favor the Carrier. Nor could we add to or subtract from the plain language of the contract. However, in order to give the Carrier as much leeway as possible in working out the problem, we did not insist that the abolished position be restored. Nevertheless, there is no question but that compensation for Kendrick as well as the employes he bumped must continue until at least the duties of the abolished position have been assigned to positions in the appropriate area that are as highly rated as the position discontinued. Otherwise, an important basis of the contract—the position rating provisions—could readily be undermined and rendered meaningless.

We have considered the additional evidence produced by the parties, in the light of and compared with the entire record in this case, but we are not satisfied that the duties of the abolished position were so materially reduced as to call for a different result or a modification of our Award 8526.

Referee Harold M. Weston, who sat with the Division, as a member, when Award No. 8526 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1959.