

Award No. 12341
Docket No. CL-11895

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., 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, except as amended, particularly Rule 3-C-2, when it abolished a Group 2 position of Store Attendant, Symbol No. CC-3, located at the Enginehouse Storeroom, Shire Oaks, Pennsylvania, Pittsburgh Region, Effective June 30, 1957.

(b) The position should be restored in order to terminate this claim and that B. L. Bell and all other employees affected by the abolishment of this position should be restored to their former status (including vacations) and be compensated for any monetary loss sustained by working at a lesser rate of pay; be compensated for any monetary loss sustained under Rule 4-A-1 and Rule 4-C-1; be compensated in accordance with Rule 4-A-2 (a) and (b) for work performed on holidays, or for holiday pay lost, or on the rest days of their former position; be compensated in accordance with Rule 4-A-3 if their working days are reduced below the guarantee provided in this rule; be compensated in accordance with Rule 4-A-6 for all work performed in between the tour of duty of their former position; be reimbursed for all expenses sustained in accordance with Rule 4-G-1 (b); that the total monetary loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287).
[Docket 501]

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employees

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established conclusively that its action in abolishing the position of Store Attendant held by the Claimant violated none of the provisions of Rule 3-C-2, but, on the contrary, was accomplished strictly in accordance with the provisions thereof. Therefore, your Honorable Board is respectfully requested to deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: When before the abolishment of his position the Storeroom Attendant covered by the Clerks' Agreement had taken from the shelf the equipment needed and placed it on the counter before the requisitioning employe and following abolishment the requisitioning employe (not covered by the Clerks' Agreement) himself went and obtained the equipment from the storeroom shelf, did the new practice embrace aspects of the abolished position's work such as to give rise to a breach of Rule 3-C-2.

We hold no.

In 1957, the Carrier abolished the second trick Store Attendant at the Enginehouse Storeroom, Shire Oaks, Pennsylvania. The bulletin described these duties of this position as follows:

"Attending store and oil house; checking material and placing in proper locations; assisting in taking inventory; keeping material in proper condition; must be familiar with diesel material on account of taking inventory."

Carrier claimed that the remaining work of the abolished position was turned over to the first trick Store Attendant who was covered by the Clerks' Agreement.

The Organization, on behalf of Claimant, who was formerly the holder of the abolished position, denied that and points to the agreed facts to support its position that after the turn-over work of the abolished position still

remained which was in part being performed by employees of another craft in violation of 3-C-2.

Insofar as here relevant, the facts are as follows:

"When the Store Attendant was on duty from 3:30 P.M. to 11:30 P.M., the Enginehouse employees were not permitted to wander through the Store Room and pick up the material they needed. They were required to present an MP-151 order to the Store Attendant and he would get the material from the bin and hand it to the employee. He would then mark the account and reference number on the MP-151 order.

After the Store Attendant position was abolished the Enginehouse employees would get the key to the Store Room from the Enginehouse office and go to the Store Room and pick up the material they needed. There was no Store Attendant on duty to collect an MP-151 order for the material taken from the Store Room."

With this position, we cannot agree.

Rule 3-C-2, insofar as is here relevant, provides:

"RULE 3-C-2.

(a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered in this Agreement when such other position or positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employee, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employee.

(3) Work incident to and directly attached to the primary duties of another class or craft such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employees of such other craft or class.

(4) Performance of work by employees other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this rule (3-C-2) will not constitute a violation of any provision of this Agreement.

(b) Where the work of an abolished position is assigned to employees coming under the provisions of this Agreement,

such work, when it is practicable to do so, will be assigned to a position or positions with rates equal to or in excess of the rate of the position abolished."

All items of work advertised in the bulletin above have been turned over to the first trick Storeroom Attendant as required by sub-paragraph (1) of 3-C-2 (a).

It cannot reasonably be contended that when the employes of other crafts entered the storehouse to pick up equipment they were "attending Storehouse."

Such a position would lead to the result that the Storeroom could never be utilized on second trick without a clerk being present. A construction of the Rule which would place the Carrier in the position of either not utilizing the storeroom or not abolishing a position is under the circumstances here present not reasonable.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1964.