Award No. 12420
Docket No. CL-11862

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 improperly abolished clerical position Symbol FL-5-F, at the Louisville, Kentucky, Freight Station, Southwestern Region, effective October 29, 1957, and failed to assign the remaining work of the abolished position to the remaining clerical positions covered by the Agreement, at the location.

(b) Clerk M. G. Schoen should be allowed four hours pay a day, as a penalty, because four hours of work was removed from position FL-24-F, in the Louisville Freight Office, in order that the incumbent of this position could assume some of the remaining duties of the abolished position, commencing October 29, 1957, and continuing until the violation is corrected.

(c) Clerk T. E. Albritton, incumbent of position FL-5-F at the time it was abolished, and all other affected employes, should be allowed all monetary loss sustained because of the improper abolishment of position FL-5-F, commencing October 29, 1957, and continuing until the violation is corrected. [Docket 463]

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 held a position 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 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

be entertained or allowed, as stipulated in Rule 7-B-1 (b). Furthermore, under Rule 7-B-1 other conditions are expressed which require the naming of claimants, compliance with time limits, and otherwise proper handling of claims. It is impossible to determine whether unnamed claimants have complied with these agreed-upon safeguards against untimely or improper claims. Thus, in the event your Honorable Board were to sustain a claim in behalf of unnamed employes in these circumstances, it would be exceeding its statutory authority to handle only such claims that have been properly handled on the property in accordance with the applicable rules governing the usual method of handling claims and grievances.

The Carrier respectfully submits that your Honorable Board should not render an award in favor of any unnamed employe or employes without knowing whether or not its action in such a matter would constitute an illegal act. See Third Division Award 2125 and First Division Award 12668 in this regard.

For the foregoing reasons, the Carrier submits that, in any event, neither the named nor unnamed Claimants are entitled to the compensation claimed.

IV. Under The Railway Labor Act, The National Railroad Adjustment Board 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 interpretations 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 Agreement between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreement 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 that there has been no violation of the applicable Agreement in the instant case and that the Claimants or other employes are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 28, 1957, the Carrier abolished position Symbol FL-5-F at the Louisville, Kentucky, freight station. The remaining duties of the abolished position were assigned to other clerical positions (FL-2, FL-24 and B-132-G) located at the freight station.

At the same time, the Carrier transferred some of the duties assigned position FL-24 to position B-108-G at Maple Street Yard and some of the work of position B-132-G to position B-94 at the Assistant Trainmaster's office.

Rule 3-C-2 of the Agreement is entitled "Assignment of Work" and provides how the work of an abolished clerical position which remains to be performed shall be assigned. Paragraphs (a) and (1) of the rule are applicable here and read as follows:

> "(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 by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed."

Petitioner says that Carrier circumvented the true meaning and intent of the foregoing rule by transferring six hours of the work of positions FL-24-F and B-32-G to three other positions at other locations and then assigning seven hours of the work of the abolished position (FL-5-F) to positions FL-24-F and B-32-G. This procedure, argues the Petitioner, was used by the Carrier to accomplish indirectly what it was not permitted to do directly under the rule, relying on Award 5560 (same parties).

Carrier replies by citing the language of Rule 3-C-2 (supra) which, it says, applies to the reassignment of the remaining duties of an abolished position, but places no restriction whatever on the reassignment of duties of positions that are not abolished.

The Board agrees with the position of the Carrier. The rule speaks in terms of the work of **abolished** positions only; it is no bar to the Carrier's exercise of its clear right to apportion or assign the work of **existing** clerical positions. Whatever may have been its reasons for doing so here, there was no violation of the Agreement and that is all this Board may properly be concerned with. (Cf. 12108).

Awards 5541 and 5560 (same parties) are distinguishable. In 5541, the Board held that work of an abolished position may not properly be assigned to other positions **at other locations**; in 5560, it was held to be a violation of 3-C-2 (a) (2) when the clerical work of the abolished position could be performed by a Yard Master only after the Carrier had assigned an unassigned Yard Master to aid him in the performance of Yard Master duties. There, Referee Carter said, among other things, "While the record indicates that the Assistant Yard Master performed only the duties of a Yard Master, it is evident that by relieving the Yard Master of Yard Master's work, it made it possible for the Yard Master to perform the Clerk's work, which had been assigned to him. **It is the Clerk's work and not the duties of a Yard Master which should have been assigned to another employe.** The Carrier may not do indirectly that which it cannot do directly." Clearly, these Awards are not in point here. (Emphasis ours.)

Accordingly, the Board finds no support for this claim under Rule 3-C-2, (a) (1), of the Agreement. It will be denied.

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 23rd day of April 1964.