

Award No. 12789
Docket No. CL-12416

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 (GL-4884) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished clerical position Symbol No. F-42, at Honey Pot Scales, Pennsylvania, Northern Region, effective June 26, 1957.

(b) The position should be restored in order to terminate this claim, and that W. F. Corcoran and all other employees affected should be allowed eight hours' pay a day, as a penalty, for June 27, 1957, and all subsequent days until the violation is corrected, and be reimbursed for all expenses sustained, as provided in Rule 4-G-1 (b). (Docket 600)

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 between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Prior to June 27, 1957, Claimant W. F. Corcoran was the incumbent of a regular clerical position, Symbol No. F-42, located at Honey Pot Scales, Pennsylvania, Northern Region. He has a seniority date on the seniority roster of the Northern Region in Group 1.

Effective with the close of business on June 26, 1957, clerical position Symbol No. F-42 was abolished. The tour of duty of this position was 8:00

tion of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 shown that no provision of the Agreement has been violated in this case; and that the Claimant is not entitled to the compensation which he claims.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts giving rise to the instant dispute are not in issue and are set forth in the Joint Submission entered into by the parties to the controversy. The Carrier abolished the position of Clerk Symbol No. F-42, at Honey Pot Scales, Pennsylvania, Northern Region, effective June 26, 1957 and assigned the remaining work of the position in part to the Agent and in part to the Yard Master neither of whom were covered by the Clerical' Rules Agreement. No other position covered by the Clerical Rules Agreement remained in existence at this station when the work in question was assigned to the two remaining members of the working force.

Petitioner contends that the Carrier violated the effective Rules Agreement between the parties, particularly Rule 3-C-2 when it abolished the former position and assigned the remaining work to the Agent and the Yard Master.

Carrier denies that it violated the Rules Agreement and asserts that the remaining work of the abolished position was properly assigned to the Agent and the Yard Master under paragraph (2) of Rule 3-C-2 (a) inasmuch as such work required less than four hours time each day and was incident to the duties of the Agent and of the Yard Master.

The pertinent provisions of the Rules Agreement are as follows:

"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:

* * * * *

(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 employe, 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 employe.

In support of its position that the remaining work to be performed from the abolished position was in excess of four hours a day, Petitioner submitted into evidence a document prepared by the named Claimant herein which contains a list of assigned duties of the abolished position that he allegedly performed as the former incumbent prior to June 26, 1957. Petitioner asserts that this document, which recites a full eight hour daily work assignment refutes the contention of Carrier based upon its own records that the remaining work required only three hours and twenty minutes to perform on a daily basis.

To further support its assertion that the remaining work of the abolished position was in excess of four hours a day, Petitioner refers to a prior dispute between the parties involving the same named Claimant and Rule 3-C-2 (a) of the Rules Agreement. This controversy arose out of the assignment of clerical duties to an Agent and Yard Master at a nearby station after the abolishment of a full time clerical position. A clerical employe from this station had been assigned to work part time at the Honey Pot Scales station and part time at the station where the position had been abolished. Carrier settled the claim upon the recommendation of a Joint Committee and thereafter re-established the former position on a full time basis.

Carrier contends that this settled dispute in no way reflects upon the actual amount of clerical work remaining to be performed when the former clerical position was abolished at Honey Pot Scales, Pennsylvania as business has declined since the prior dispute when the clerical employe from its Nanticoke station was assigned to perform the necessary clerical work at Honey Pot Scales, Pennsylvania.

Carrier submitted evidence indicating a decline in the amount of business handled at Honey Pot Scales during the first six months of 1957 which it contends resulted in a substantial decrease in the amount of time spent by the named Claimant in performing the duties of the abolished position. Carrier asserts that the total amount of clerical work involved in both Station Operations and Yard Operations that remained was 3 hours and 20 minutes per day.

Carrier objects to the Board's consideration of the document prepared by the Claimant purporting to show his former assigned duties as incumbent of the abolished position because it was not offered in evidence when the claim was handled on the property. The record shows that this document is dated August 15, 1959 and it is fully set forth in Petitioner's submission. Inasmuch as the document bears a date prior to the actual determination of this dispute on the property and contains no new issues not considered by the parties on the property we shall consider it.

The instant claim as denied by the Carrier and now before the Board although specifying Rule 3-C-2 in particular is not limited to such rule but based upon the broader premise that the Carrier violated the rules of the Agreement when it abolished clerical position Symbol No. F-42. Petitioner asserts that the full duties of the abolished position continued and were improperly assigned to other employes outside the scope of the Rules Agreement. In support of its position Petitioner has offered in evidence the self serving statement of the named Claimant purporting to establish that the various duties previously performed by him in the abolished position are now performed by the Agent and Yard Master at Honey Pot Scales, Pennsylvania and that the performance of such work requires more than four hours' work a day. Petitioner asserts that the evidence offered by Carrier to the contrary is too general and fails to consider the large amount of incidental work included in the duties of the abolished position.

Carrier contends that it carefully complied with Rule 3-C-2 (a) (2) in that the remaining work amounted to less than four hours' a day which was assigned to the Agent and the Yard Master as incidental to their regular duties in the absence of any other covered employee to whom the work could be assigned.

Thus it is clear that the basic and decisive issue presented is whether or not less than four hours' work of the abolished position remained to be performed. The patent conflict in the evidence offered by the parties requires a determination of facts that is essential to the proper disposition of this dispute and this Board cannot settle such questions of disputed facts. Therefore, we have no alternative but to dismiss the claim. Awards 11917 and 11038.

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 Employees involved in this dispute are respectively Carrier and Employees 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 on the facts of record the Division is unable to determine whether Carrier violated the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.