Award No. 12809
Docket No. CL-12385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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-4886) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-1, 3-C-2 and 3-E-1, when it reassigned the duties of clerical position Symbol K-63-D, in the offices of the Agent and the Track Supervisor at Warsaw, Indiana, Northwestern Region, effective November 11, 1957, allegedly transferred the position to Valparaiso, Indiana, effective November 12, 1957, then abolished the position, effective November 14, 1957.

(b) That the consolidation of the two offices should have been negotiated under Rule 3-E-1, and that the position should be restored at Warsaw, Indiana, in order to terminate this claim, and that Blaine Oliver and all other employes affected by the transfer and 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 loss sustained under Rule 4-A-1 and 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 positions; be compensated in accordance with Rule 4-A-2 if their working days were 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 positions; 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. (Docket 666.)

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

This point has again recently been decided in Award No. 9785, involving the present parties, where Referee Fleming dismissed a claim in behalf of unnamed claimants, stating as follows in his Opinion:

> "The Employes involved in this claim are neither named nor identified.
>
> Where there is no identifiable Claimant in whose behalf the claim is made, there is no proper claim before us and the tendered claim should be dismissed.
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> This decision to apply only under the particular circumstances of this case."

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 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 shown that its action in this dispute was not violative of Rule 3-C-1, 3-C-2 or 3-E-1, and that the Claimants are not entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts are not in dispute. Prior to November 11, 1957, Claimant held Clerk position K-63-D at Warsaw, Indiana. His assignment required that he work from 7:00 A. M. to 11:00 A. M. at the passenger station and from 12:00 Noon to 4:00 P. M. at the Track Supervisor's office.

Claimant was advised on November 5, 1957, that his duties at the passenger station would no longer be required, and that they will be taken over by Clerk D. L. Wolfe. On November 6, 1957, Claimant was notified that effective November 12, 1957, all duties of Clerk position K-63-D would be transferred to Valparaiso, Indiana. Simultaneously (November 6, 1957), Claimant was also advised that position K-63-D would be abolished effective November 14, 1957, and Clerk L. Akers at Valparaiso was advised to absorb the duties of Clerk position K-63-D effective November 15, 1957.

Petitioner contends that the Carrier arbitrarily re-assigned the duties of Clerk position K-63-D and transferred the position from Warsaw, Indiana,

to Valparaiso, Indiana, in violation of Rules 3-C-1, 3-C-2 and 3-E-1, particularly Rule 3-C-2(a)(1). Carrier, Petitioner alleges, accomplished indirectly what it could not do directly under the applicable rules of the Agreement.

The fundamental issue is whether Carrier complied with the provisions of the Agreement when it transferred part of the work of position K-63-D to another Clerk at Warsaw, when it transferred the balance of the work of that position to Valparaiso, and when it later abolished the position and transferred the work to another Clerk at Valparaiso.

Rule 3-C-1 deals with seniority rights when an employe is displaced from his regular position. Paragraph (e) of Rule 3-C-1 says:

> "(e) An employe whose assignment is permanently changed one hour or more from the time shown on the last bulletin advertising his position, either or both of whose rest days are changed, or whose location is changed from within the limits of one city or town to within the limits of another city or town, within the same seniority district, may within twenty-nine days after notification, if he so desires, exercise seniority."

Claimant retained his rights to Clerk position K-63-D when part of it was transferred to another employe, and he retained his rights to the position when it was transferred to another location in the same seniority district. Warsaw and Valparaiso are in the same seniority district. There was, therefore, no violation of Rule 3-C-1 and more particularly paragraph (e) thereof. The fact that the position was abolished after it was transferred to Valparaiso does not affect the compliance with that Rule.

Rule 3-C-2 (a) provides 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:
>
> (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.
>
> (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."

The relevant portion of that Rule is paragraph (a) (1).

We had occasion to consider this Rule in Docket CL-11941 involving the same parties which was resolved in Award 12108. The facts in that case are comparable to those in this dispute. The Petitioner contended there, as it does here, that the Carrier accomplished indirectly what it could not do directly when it transferred the position from one location to another and then abolished it. We said:

"Rule 3-C-2 contemplates the abolition of positions and then sets up the procedure to be followed in distributing or assigning the work of the abolished position which must be followed to avoid a violation of the Agreement. Contrary to the allegation of the Petitioner that the Carrier did indirectly what it could not do directly, the facts indicate that after abolishing the position in question, the said Carrier then proceeded to assign the work in compliance with Rule 3-C-2."

That is exactly what Carrier did in this case.

Similarly, a claim also involving the same parties and the same Agreement was denied by this Division of the Board in Award 12420. We said:

"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 re-assignment of the remaining duties of an abolished position, but places no restriction whatever on the re-assignment 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 is no violation of the Agreement and that is all this Board may properly be concerned with. (Cf. 12108)."

The principles enumerated in Awards 12108 and 12420 are applicable to the facts in this dispute and are herewith affirmed.

Awards 3884 and 5541, relied on by Petitioner, are not applicable. They are distinguishable. Award 3884 involves a different Carrier and a different Agreement containing a distinctly different rule. Award 5541 does involve the same parties, but the facts and the relevant issues are not similar. We held in that Award that work of an abolished position may not be assigned to other positions at other locations.

Rule 3-E-1 is, likewise, not applicable. See a full discussion of this rule in Award 12285; also Award No. 26, Special Board of Adjustment 374.

On the basis of the record and the holdings of the Division of this Board, we conclude that there is no merit to the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1964.