Award No. 12823
Docket No. CL-12285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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-4847) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished a position of Trucker at the Freight Station, Youngstown, Ohio, Lake Region, effective December 10, 1958.

(b) The position should be restored in order to terminate this claim and that Mr. E. R. Johnson and all other employes 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 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 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 position; be reimbursed for all expenses sustained in accordance with Rule 4-G-1 (b); that the total loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287). [Docket 616]

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 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

CONCLUSION

The Carrier has shown that the remaining duties of the abolished Trucker position in question were properly assigned to the remaining Tallyman position covered by the Agreement, at the location, in accordance with applicable Rule 3-C-2, which is wholly controlling in this dispute, and, in any event, the Claimants are not entitled to the compensation claimed on their behalf.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no conflict in the essential facts of the circumstances under which this dispute arose. Prior to December 10, 1958, Carrier maintained at its Youngstown, Ohio, Freight Station, a force consisting of one Tallyman (Group 1) and one Trucker (Group 2). Claimant E. R. Johnson was the regular incumbent in the Group 2 Trucker position.

Effective December 10, 1958, the Claimant's position of Trucker was abolished. The remaining work of the abolished position was thereafter assigned to the Group 1 Tallyman, who was assisted at various times by an Extra Trucker and by Truck Drivers employed by various trucking firms, who are not covered by the Clerical Agreement.

Petitioner contends that Carrier violated the agreement, particularly the Scope Rule and Rule 3-C-2, by impermissibly assigning the work of a Group 2 employe to a Group 1 employe. As remedy, it asks for restoration of the Group 2 Trucker position, and restoration to "their former status" of Trucker Johnson "and all other employes affected by the abolishment of their position" and compensation to all these for "any monetary loss sustained by working at a lesser rate of pay" as well as for vacation pay, rest days, also expense payments lost, as well as reduction of days incurred as the result of said allegedly improper actions, all said losses to be ascertained jointly by the parties.

The Scope Rule is a general one, listing the classes of employes covered by the agreement terms, but not mandating the assignment of any of them to any defined duties. It divides the covered employes into Group 1 employes and Group 2 employes, the former including tallymen, the latter including truckers. Rule 3-B-1 provides for separate seniority within each of the two Groups. Rule 3-C-2 (a) (1) and (2), which are primarily relied on by Petitioner in the instant claim, deal specifically with the abolition of positions, where work previously assigned to such position remains to be done. They require the assignment of such work to "another position or positions" covered by the agreement, if such other position or positions are in existence at the location where the work of the abolished position is to be performed. If no such position exists, the work may be assigned to supervisory employes, if said work is incidental to their duties and if it amounts to less than 4 hours' work per day of the abolished position or positions.

The subdivisions of 3-C-2 which follow deal with other variants of job abolition situations and also impose additional conditions for such circumstances. Most relevant to the instant claim are:

(a) (4) which provides that work performed by employes not covered by Agreement will not constitute a violation if paragraphs (a) (2) and (a) (3) are complied with.

(b) providing for assignment of work of abolished position to others with equal or higher rates "when it is practicable to do so."

(c) (1) and (2) providing for a requestionnaire study, when the work is assigned to Group 1 positions carrying lower rates than that of old jobs.

(d) providing that if the work is assigned to a Group 2 position of lower rate, a study may be made to determine "the proper rate" and a rate assigned therefrom.

It is clear from the foregoing that the agreement does not specifically forbid the transfer of the residue of an abolished position from one Group to another. On the contrary, it accepts the possibility; first, by its unmodified language in permitting transfer to "another position or positions covered by the Agreement"; second, by its provisions referring to necessary attributes of the position to which transfer is made (i.e., "which remain in existence at location", etc., and if less than four hours' work per day is to be done by supervisor) again without distinction as to Group, and third, by its stipulations for rates and rate determination. The latter refer to Group 1 and Group 2 possibilities as the final repositories of the work residue, without a word as to conditions under which said work is to be confined for transfer to one category and not the other.

Clear language is readily available, and it must be presumed that it would have been used to confine the transfer of residue work from an abolished position to its own original Group, if the parties had had this in mind when writing their agreement.

Another aspect of the controversy concerning the right to transfer across Group lines arises from the question of whether the newer work was properly classified as Group 2 work. If it were not, it might be an evasion of seniority and/or rate requirements of the agreement, to have so misclassified it.

The Agreement gives us some guidance on this subject in two places:

(1) In 3-C-2 by its protection of the kind of work to which the transfer is made (as indicated above, this is not specifically confined to within Group categories) and of the rates (either equal to, in excess of, or as determined by study).

(2) In the final paragraph of the Scope Rule:

> "When the duties of a position covered by this Agreement are composed of the work of two or more classifications herein defined in Groups 1 and 2, the classification or title of such a position shall be determined by the preponderance of the work that is assigned to such position."

Petitioner contends that the Scope Rule proviso just referred to is inapplicable to the present circumstances, in that the provision is meant to apply to "a new position with assigned duties including both Group 1 and Group 2 work, the classification of which has not yet been determined."

We agree to this extent: that the most probable and typical situation visualized by the parties when they wrote this paragraph was probably that of an initial classification problem, rather than that of a sequel to a transfer from an abolished position. Nevertheless, the rule conforms to the reasonable universal measurement which is applied in such circumstances, absent any other explicit provisions.

The question remains to be answered: was the new work functionally Group 1 work or was it Group 2 work, or if a combination of both, which was the greater part of it?

The work which was left to be done when the Trucker's job was abolished is described by the Carrier as that of "platform work." It further states that it consisted of "moving freight between zones in the freighthouse and the tailboard of truck." Prior to the abolition and transfer, the Tallymen's duties "involved the handling of freight from the freighthouse to box cars and from box cars to the freighthouse. The Tallyman's duties included the checking of freight in addition to actual trucking work; the primary duty of the Trucker was the trucking of freight."

We find no evidence in the record to refute Carrier's above description of the residual work, nor do we find either assertion or proof by Petitioner that said work was the work entirely or predominantly of the duties assigned customarily and traditionally to Group 1 employes exclusively.

The Petitioner's Ex Parte Submission describes as part of the impropriety of the transfer which is challenged, the Carrier's allegedly impermissible act of assigning to the Tallyman on various occasions, the assistance of an Extra Trucker and also truck drivers from outside companies who are not covered by the Agreement. Carrier concedes that such supplementary assistance was assigned, but contends it was not a violation of the Agreement.

A threshold procedural question is raised by Carrier concerning this aspect of the claim. It contends that these allegations were not raised on the property as redressable violations and should be dismissed by us as not properly before this Board.

The record shows on this question that by letter to Carrier dated April 15, 1959, Petitioner amended its agreed upon facts to include the following positions of Division Chairman:

> "Truck driver of Trucking firms pick up and deliver freight throughout entire area of freight warehouse in violation of Rules Agreement and Awards of National Railroad Adjustment Board, Third Division, in Chicago, Illinois."

This was raised at a time substantially before the submission of the same position to this Board (the latter by Employes' letter dated August 23, 1960). This allowed for sufficient time for direct response as well as for comprehension of Petitioner's posture before this Board and is within the general scope of the position held by Petitioner throughout the handling of this claim. We believe, therefore, that there are not sufficient procedural grounds for extracting this position from Petitioner's claim.

Turning to the merits of the claim in respect to the alleged improper use of Extra Truckers and outside Truck Drivers:

As to Extra Truckers:

Carrier admits the use of said Extra Trucker as assistant to Tallyman on three days in December, 1958, four successive days in January, 1959, five days in February, 1959, and on eight days in March, 1959.

We reject Petitioner's position that said assignment was in violation of Rule 3-C-2 on the allegation that it was not a "position which remained in existence at the location where the work was to be performed." The record shows no refutation by evidence of Carrier's statement that the services of an extra trucker were utilized on various occasions when needed, prior to the abolishment of the regularly assigned position. Petitioner has failed to meet its burden of proof in this respect, nor has it shown that the Extra Trucker was assigned in violation of the rules applicable thereto (e.g., 2-A-1(e)).

As to Outside Truck Drivers:

The determination of this aspect of the claim depends on the answer to the single question: did said assignment deprive covered employes of work which had by customary and traditional practice been exclusively assigned to them? We find only assertion and counter-assertion — not proof — in the record on this point. The temptation is to yield to a superficial logic in this situation, viz. — Johnson was laid off; the man who had taken over part of his work was assisted by an outsider; the outsider is doing Johnson's work. But this Board is entrusted by statute and by the nature of its appellate function with the solemn responsibility of acting on proven facts, not surmise or conjecture. We see no evidence in the record from Petitioner which would satisfy its burden of supplying proof (in denial of the Carrier's assertions) that the outside truck drivers were performing the work of trucking freight which the Claimant previously did, or which was generally the exclusive domain of this class of employes.

Our conclusions from the foregoing are that the claim must, in all respects, be rejected.

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 31st day of July 1964.