

Award No. 13463
Docket No. CL-13576

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, 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-5196) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-2 and 4-F-1, when it abolished a Group 1 position of Foreman at the Mill Street Freight Station, Akron, Ohio Lake Region, effective with the close of business August 31, 1960.

(b) The position should be restored and Extra Clerk Martha Guiher and Clerk Al Archual, to whom some of the duties of the abolished position were assigned, and all other employees adversely affected, 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 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 (Award 7287). (Docket 1061.)

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.

cation 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 the actions here complained of did not violate the Rules Agreement, that the position of Foreman was properly abolished, and that the Employees have presented no valid evidence to the contrary.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 31, 1960, Foreman German at the Akron Freight Station retired, effective September 1, 1960. His duties had consisted of the following:

"Supervision over platform and warehouse operations; make zone balance, handle cash settlement with drivers, spot inbound and outbound waybills and shipping orders for the unloading and loading, and prepare inbound freight bills for LCL shipments."

From September 1 until September 12, the shop employees were on strike, at the termination of which the position of Foreman was not re-established. On September 15, Claimant A. Archual, a Clerk F-300, had his work location shifted to the office previously occupied by the Foreman, and was given the following additional duties:

"Make station balance and related items, remittances, settle with PV and D Drivers and selling freight bills to cash customers, prepare AD-1624 Reports and expensing freight bills. He also advised there would be no supervising of other employees on Claimant's position F-300."

The Organization filed the instant claim on behalf of Clerk Archual and Extra Clerk Guiher, contending that the Carrier has violated the Scope Rule and Rule 4-F-1 by requiring the Clerk to perform virtually all duties that had earlier been performed by the Foreman prior to his position being abolished. It also alleges a violation of Rule 3-C-2 in that the Clerks' position was not one which remained in existence at the location where the work was to be performed. Rather, it argues this would have justified assignment of the work to the Tallyman.

The Carrier contends that the Foreman's position was properly abolished in accordance with the terms of Rule 3-C-2 (a) (1) inasmuch as the work continued to be performed at the same location. Carrier similarly denies violation of Rule 4-F-1, inasmuch as no new position was created nor new rate of pay instituted.

It is obvious that the parties' Agreement contemplates the abolishment of certain positions, and also the assignment of the remaining duties to other positions covered by the Agreement. Rule 3-C-2 permits such an assignment and it is clear that it was properly carried out by the Carrier in this case. The "other position" remaining in existence had performed its duties on a different floor than had been used by the holder of the abolished position, but after abolishment, the work location was shifted to the latter location. Thereafter, work was to be performed at this location as required by Rule 3-C-2. This Board has held that future performance of the tasks is the key to proper location.

"The phrase 'at the location where the work of the abolished position is to be performed' employs the future tense. Petitioner would have us substitute 'was performed' for the emphasized (Emphasis ours) words in the foregoing quotation. For us to do so would be tantamount to drafting a new Rule. That we have no such power has been long established."

The Organization argues that Rule 4-F-1 constitutes a further limitation on the right to assign tasks remaining from abolished positions. Its claim in this regard is based upon the assumption that duties remaining from a higher position were assigned to it as a lower paying position thus "having the effect of reducing rates of pay." But, this assumption fails to recognize the fact that the Foreman's position had been so eroded by reduction in business volume, and numbers of personnel supervised that it no longer constituted a viable position.

It is unquestioned that the Claimant was forced to expand his clerical responsibilities by the Carrier's action, but it is equally convincing that the Claimant was not assigned either all clerical duties or those supervisory elements of the Foreman's position which undoubtedly contributed to the higher rate that position commanded (Award 3, Special Board 374). The Organization has not met the burden of proving that sufficient Foreman's work remained, and was assigned to Claimant as to justify a holding of a violation of Rule 4-F-1. It is difficult to support the Organization's contention that the imposition of the Foreman's remaining clerical duties upon the Claimant had the effect of reducing rates of pay or evading the application of the rules. To the contrary, it was done completely according to the authority granted by Rule 3-C-2.

Although the Claimant's position was re-created following the strike settlement and given additional clerical duties, this did not constitute creation of a new position having "the effect of reducing rates of pay or evading the application of these rules." The Organization's claim lacks merit.

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 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 14th day of April 1965.