



Award No. 15726
Docket No. CL-15155

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5641) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly the Scope Rule, and Rules 3-C-1, 4-G-1, 4-G-2, 9-A-1 and 9-A-2, among others, when it abolished the five (5) clerical positions in the Marine Department, consisting of Head Clerk owned by A. Pincus and four (4) Boat Dispatchers owned by J. Hearn, L. Cafiero, O. Muller and D. Waldman, and then assigned the duties of these positions to:

(a) Employees not covered by the Scope of the Clerks' Agreement and

(b) Employees owning lower rated positions; and

2. The Carrier shall restore the clerical positions Head Clerk and four (4) Boat Dispatchers and shall compensate Clerks Pincus, Hearn, Muller, Cafiero and Waldman the difference between the daily rate they had been paid (Pincus \$23.406 and Hearn, Muller, Cafiero and Waldman \$22.689) and the daily rate of any lower rated positions they are incumbents of starting September 1, 1963, and for each day thereafter until the violations are corrected; and

3. The Carrier shall pay Clerks J. Mauro, J. Hagerty and B. Benure and their successor or successors at the rate of \$22.689 per day and to Clerk J. Pinghere and his successor or successors at the rate of \$23.406 for being required to perform the duties of higher rated positions that have been abolished and to all other employees who are required to perform the duties of the abolished clerical positions Head Clerk and Boat Dispatchers starting September 1, 1963, and for each day thereafter until the violations are corrected; and

4. The Carrier shall pay all affected employees who were displaced or denied their exercise of seniority to a position account

of Clerks Pincus, Hearn, Muller, Cafiero and Waldman exercising seniority by bid or bump, for all loss of pay starting September 1, 1963, and for each day thereafter until the violations are corrected and all wage losses shall be determined by a joint check of the Carrier's records; and

5. The Carrier violated the specific provisions of Article V, Section 1(a), of the National Agreement dated August 21, 1954, when it failed to render the reason for disallowance within the sixty (60) day time limit period in claim.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreement effective July 1, 1945, and as amended and the National Agreement signed at Chicago, Illinois, August 21, 1954, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts. Various Rules and Memorandums, therefore, shall be referred to from time to time without quoting in full.

This dispute involves the arbitrary abolishment of four (4) boat dispatcher positions and a Head Clerk's position, the work of which was still in effect and assigned or transferred to Employees outside the Scope of the Clerks' Agreement and to lower rated positions, when the Pennsylvania Railroad cancelled its floating contract as of September 1, 1963. Furthermore, the Carrier failed to render the reason for disallowance within the sixty day time limit of claim this dispute involved, and violated the specific provisions of Article V, Section 1(a), of the National Agreement dated August 21, 1954.

After investigating and finding most of the work of the abolished positions being performed by Yardmasters outside the Scope of the Clerks' Agreement (see Employees' Exhibit C), and also the Head Clerk's work being performed by clerical employees in lower rated positions, Mr. F. Kruhlinski, Local Chairman, submitted claim to Mr. W. F. Clemens, Freight Trainmaster, on October 30, 1963 (see Employees' Exhibit A).

On November 6, 1963, Mr. W. F. Clemens, Freight Trainmaster, replied to Mr. Kruhlinski, stating, "We cannot agree to these claims, and, therefore, deny them." The Employees do not consider this a reason for denying a claim (see Employees' Exhibit B).

On November 7, 1963, the Yardmasters submitted a signed statement to Mr. F. Kruhlinski, Local Chairman, that they were performing the work and duties of the abolished Boat Dispatcher positions (see Employees' Exhibit C).

Meeting was held on November 11, 1963 between Mr. Clemens and Mr. Kruhlinski to formulate a joint statement of agreed upon facts. They were unable to agree, and ex parte statements were submitted.

Mr. W. F. Clemens, Freight Trainmaster, submitted his statement on December 16, 1963 (see Employees' Exhibit D).

Mr. F. Kruhlinski, Local Chairman, submitted his statement on December 26, 1963, concerning the boat dispatchers' work still in existence and performed by the Yardmasters, a craft outside the scope of the Clerks' Agreement (see Employees' Exhibit E). This information was provided by the Yardmasters who performed the work.

In addition, forty-five (45) regular positions of tug boat personnel (captains, engineers, firemen, mates and deckhands), as well as approximately ten (10) extra list positions were also abolished.

On October 30, 1963, claim was filed with the Freight Trainmaster by the Local Chairman of the clerical organization in which he alleged the Carrier violated certain provisions of the clerical agreement because it abolished the foregoing clerical positions in its Marine Department. A copy of this letter is attached hereto and marked Carrier's Exhibit E.

On November 6, 1963, the Freight Trainmaster denied the claim, and arranged to meet with the Local Chairman in an effort to formulate a Joint Statement of Agreed-Upon Facts. A copy of this denial is attached hereto and marked Carrier's Exhibit F.

The Local Chairman and the Freight Trainmaster met on November 11, 1963, and were unable to agree upon a statement of facts and separate statements were sent to the General Chairman and the Manager of Personnel for further handling. Copies of these statements are attached hereto and marked Carrier's Exhibit G and Carrier's Exhibit H.

On January 4, 1964, the claim was listed for discussion with the Manager of Personnel by the General Chairman, and in this letter the General Chairman added a paragraph to the claim, alleging that the Carrier failed to render a reason for disallowance of the claim, thus violating Article V, Section 1 (a), of the August 21, 1954 agreement. A copy of this letter is attached hereto and marked Carrier's Exhibit I.

The Manager of Personnel met with the General Chairman on January 27, 1964, to discuss this claim and on February 18, 1964, the claim was denied. A copy of the Manager of Personnel's denial is attached hereto and marked Carrier's Exhibit J.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier abolished some 60 positions in the Marine Department when the Pennsylvania Railroad cancelled its floating contract as of September 1, 1963. The agreement for floating service had been in effect between the Carrier and the Pennsylvania Railroad since before 1900. Among the 60 abolished positions were those of a head clerk and four boat dispatchers which were covered by the Clerks' Agreement. The instant claim was progressed in their behalf.

The Employees contend that this clerical work still exists and has been given to employees who are not of the clerks' craft (yardmasters), and to lower rated clerks; that the dispute should be resolved on procedural grounds because the Carrier failed to state the reasons for its denial of the claim within 60 days, as required by Article V, Section 1 (a), of the National Agreement dated August 21, 1954. Further, that when Carrier abolished the five clerical positions in the Marine Department, Carrier violated the established practice and understanding of the provisions of the Clerks' Agreement, particularly the Scope Rule, and Rules 3-C-1, 4-G-1, 4-G-2, 9-A-1, and 9-A-2.

Carrier defends its position by stating that as of September 1, 1963, much of the work performed by the claimants was considerably reduced or

disappeared entirely, and there was no necessity for retaining their positions. What clerical work did remain was distributed to other clerical employees in the area; that Carrier abolished the claimants' positions and assigned the remaining work to the class of employees who were entitled to perform it; that the work performed by Yardmasters in making telephone contact with other railroads was not clerical work and can properly be required of Yardmasters incident to the primary duties of their positions; that the Employees have not borne the burden of proof of their allegations; and, Carrier did not violate any of the rules of the scheduled agreement as alleged by the Organization.

As to the Organization's argument, as set forth in Claim 5, that the Carrier did not give a sufficient reason for disallowance of the claim as required by Article V of the August 21, 1954 Agreement, we find that the words of denial by the freight trainmaster on November 6, 1964, who stated "We cannot agree to these claims and, therefore, deny them" was sufficient notice for such disallowance. In Award 14761, the Board pointed out, "Article V of the August 21, 1954 Agreement does not prescribe the words or language which must be used to give notice of the disallowance of the claim . . . nor does the denial require detailed or specific language . . . nor is the reason even required to be valid." In addition, we find that Carrier did deny the claim within the 60-day period, as prescribed by Article V; therefore, this claim will be decided on its merits.

It is clear and it is not controverted that the Carrier has the right to abolish jobs when they are no longer necessary. This is supported by numerous Awards of the Third Division:

AWARD 6187

"Carrier may, when in the interest of efficiency and economy its operation so requires, abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of its collective agreement. However, when doing so, the work of the positions abolished must be assigned to and be performed by the class of employees that are entitled thereto under the Agreements." (Emphasis ours.)

From the facts and exhibits of the record, we find upon the respective showings made, that Carrier did violate the Scope Rule of the Agreement in that all such clerical work that remained after the abolishment of the positions in question was not all such work that was transferred to other clerical employees. The Yardmasters' statement and the Employees' exhibits C and E, are most convincing. The operational report made in the month of October, 1963, or one month subsequent to the abolishment of the five positions in the Marine Department, is entitled to consideration in determining that the contacting of foreign line boat dispatchers by telephone was work which had been exclusively assigned to the boat dispatcher's position for more than 20 years, and from the operational reports, the Yardmasters are not doing work which is an incident to and directly attached to primary duties of their positions. We do not disagree with Third Division Award No. 9746, in which the Board held that supervisors have the right to perform so-called clerical work incident to the primary duties of their positions; however, as stated in that Award, the thought that if the clerical duties incidental to supervisory work become too time consuming, then a clerk position should be established. Further, that tradition and past practice may be

a deciding factor in determining to which craft certain work belongs; that Carrier has not refuted the schedule as such, or the statement by Yardmasters that it requires that a man be available for a call from the foreign line boat dispatcher one hour or less than the above-mentioned times so that the dispatcher may furnish the pilot with the information furnished by the Yardmaster who answers that call.

It appears, as set forth by the Organization, that at least six hours' daily work of each of the Boat Dispatchers was transferred to the Yardmasters, who disclaim that they performed any of these functions prior to the abolishment of this position as of September 1, 1963, as alleged by the Carrier. Claim No. 1 will be sustained.

In Claim No. 2 of Organization, it is requested that the five clerical positions be restored, and that the employees be compensated the difference between the daily rate they had been paid and of any lower rated positions they are incumbents of, starting September 1, 1963. In Award 14186, the Board held, "It is a firmly established principle of this Division that we have no right to order the Carrier to restore positions which have been abolished." Therefore, Claim No. 2 will be denied.

Claim No. 3 will be sustained, as it appears from the record that Claimants listed therein have been required to perform, in addition to their regular assigned duties, duties formerly performed by the incumbents of said abolished positions, whereby overtime is required. The Claimants should be paid the higher rate of pay for performing higher rated work of the abolished position, and their compensation shall be the difference between what they have received at the lower rate and the higher rate of the abolished positions starting September 1, 1963, and for each day thereafter until the violations are corrected.

Claim No. 4 will be denied, as the Organization has failed to sustain its burden of proving that all affected employees who were displaced by Claimants were denied their right to exercise their seniority to any position.

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 Carrier violated the Agreement as to the findings in the opinion.

AWARD

Claim No. (1) (3) sustained. Claim No. (2) (4) (5) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July 1967.

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