Award No. 16441
Docket No. CL-16386

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, 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-5984) that:

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-B-1 (a) and (b), 3-E-1 (b), Appendix A, when on May 13, 1964, Seniority District "D", S.-E.E. was reorganized with twenty-one positions from Seniority District "A-1" and thirty-two positions from the Valuation Department to form the heretofore non-existent office of Manager Road and Equipment Accounting without an agreement between the management and the General Chairman, which agreement is mandatory.

(b) Claim filed for and on behalf of the clerks whose names appear on the Seniority Roster of Supervisor, Equipment Expenditures dated January 1, 1964, attached to the Joint Submission. (Docket 1575)

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 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 Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment 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.

There was a Rules Agreement, effective August 16, 1921, which was designated "Regulations for the Government of Clerical Forces under the Jurisdiction of the Motive Power Accountant." A separate seniority district was provided for the employes of this office or department. Effective May 1,

"Claim of the Local Protective Committee that:

(A) The Carrier violated the Clerks' Agreement, effective May 1, 1942, except as amended, particularly Rules 3-E-1 (B) and 3-B-1 (A and B), Appendix A.

(B) Claim filed for and on behalf of the following clerks. (See attached list of S.–E.E. Roster January 1, 1964 with additions.)

(C) The Carrier violated these particular rules when on May 13, 1964, Seniority District D, S.–E.E., was reorganized with twenty-one positions from Seniority District A-1 and thirty-two positions from Valuation Department to form the heretofore nonexistent Office of Manager Road and Equipment Accounting without an agreement between the management and the General Chairman as prescribed in the above mentioned rules.

(D) Claimants feel an agreement between the management and the General Chairman is mandatory before your reorganization can be recognized.

(E) Claim filed in accordance with Rule 7-B-1 of the Clerks' Agreement."

The Manager denied the claim under date of August 28, 1964. The Division Chairman of the Organization then listed the claim for discussion with the Manager, Personnel–Financial Department. Following discussion the Manager denied the claim by letter dated November 18, 1964. At the request of the Division Chairman, a Joint Submission was prepared, a copy of which is attached as Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner has charged Carrier with violating the Agreement when it reorganized a Seniority District without first obtaining the consent of Petitioner. Petitioner contends that such consent is mandatory under the provisions of the Agreement, particularly Rule 3-E-1 (b).

There is no demand for specific relief or remedy in the claim. Implicit in the claim language is a request for a finding by the Board that the Agreement was violated.

The Board is satisfied that the claim must fail on either of two grounds: 1) That the claim was not handled in the usual manner in accordance with the provisions of Section 3, First (i) of the Railway Labor Act, Awards 10193, 10416, and 13235; or 2) that this Board is not empowered to grant hypothetical or declaratory relief, Awards 10934 and 14409.

Under the Statement of Claim as is presented, the Board is precluded from considering this dispute on the merits. A request to find that the Agreement was violated, under the circumstances, is tantamount to a request for a declaration of the future rights of the parties as to specific provisions in the Agreement. This the Board cannot do.

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 Claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.

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