Award Number 17758
Docket Number CL-17216

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6593) that:

(a) Carrier violated the provisions of the Agreement, effective December 15, 1952, also Supplements to the Agreement, particular reference to Rule No. 9—REDUCING FORCES, when they improperly abolished in the Stores Department, Allentown Stores, Bethlehem Stores and Ashley Stores, Pennsylvania Division, positions abolished at end of tour of duty Tuesday, April 9, 1968.

(b) Carrier now be required to compensate J. Nagle, who held position as Stores Laborer, S-10, Allentown Stores, rate of pay $2.70774 per hour; L. Hartranft, who held position as Section Storekeeper, S-2, Bethlehem Stores, rate of pay—$2.89700 per hour; J. Harring, Stores Helper, S-19, Ashley Stores, rate of pay—$2.74554 per hour; T. Hughes, Gang Leader, S-17, Ashley Stores, rate of pay—$2.84634 per hour, a day's pay at the rate of the abolished position, commencing as of April 10, 1968, and claim to continue until the violation has been properly corrected by the Carrier.

(c) Carrier be required to properly compensate all other employes who had been improperly displaced on account of improper abolishment of positions in the Stores Department. Carrier's records to indicate the affected employes.

(d) Carrier further violated the Agreement between the parties dated August 21, 1954 (Current Rule No. 35 of the Clerks' Agreement), when it failed to allow or timely deny the claim filed with the Purchasing Agent at Elizabethport, N.J., by the District Chairman on May 27, 1968, which claim should now be allowed as presented.

EMPLOYES' STATEMENT OF FACTS: By letter dated April 1, 1968 Carrier's Purchasing Agent advised the General Chairman of the abolishment of four (4) positions in the Stores Dept. on the Pennsylvania Division. (Employes' Exhibit A). Carbon copy is shown going to the Local and District Chairman.

On April 3, 1968, the General Chairman addressed communication to the Purchasing Agent, with copy to the Local and District Chairman, attached as Exhibit "B", referring to the April 1 letter stating, in part:

> "This letter was improperly addressed to the undersigned. The Clerks' Agreement in Rule 9 requires such notice to be handled with the Local and District Chairman."

For the Board's information Mr. Czapp is the District Chairman at all three locations involved in this case, as well as Local Chairman at Allentown and Bethlehem, while Mr. Ichter is Local Chairman at Ashley.

Prior to abolishment of the positions, subject of this dispute, the ordering of material and supplies for Jim Thorpe, Scranton, and Taylor, by requisition was routed through Storekeeper at Ashley, Pa., who then forwarded same to Elizabethport Stores, from which point the supplies were furnished. This procedure was changed to have materials and supplies for these locations requisitioned directly from Elizabethport Stores, thus eliminating the Middleman (Ashley). Previously material would be loaded in a car at Elizabethport and routed to Ashley, where it would be unloaded, then reloaded for movement to Jim Thorpe, Taylor and Scranton.

Subsequent to the abolishment of the positions in question the car is loaded at Elizabethport in such a manner that it is not necessary to unload and reload it at each point, but simply that the employes at each of the stopoff points remove the material consigned to them only, following which the car is moved to the next location for similar handling, thus eliminating the "Middleman" handling at Ashley as before.

(Exhibits Not Reproduced)

OPINION OF BOARD: By letter of April 1, 1968 Carrier's Purchasing Agent advised the General Chairman of the abolishment of four (4) positions at Allentown, Bethlehem and Ashley Stores. Carbon copies were sent to the Local and District Chairman. One of the abolished positions, Position No. S-2, Section Storekeeper was a fully covered position with all rules of the Agreement applying thereto. Upon abolishment of that position, the duties were transferred to Position No. S-1, Storekeeper, a position which is excepted from the seniority and bulletin rules (Rules 3 and 6, effective July 1, 1967). The Local Chairman made formal claim by letter to the Purchasing Agent dated May 27, 1968. This claim was not denied until October 18, 1968.

Rule No. 35 (b) of the Agreement provides as follows:

> "(b) The Employe, or his Representative, will be notified in writing within 30 days from the date the claim is presented, if claim is not allowed. If not so notified, the claim will be allowed."

Carrier did not comply with the time limits provided for in that section and therefore the claim will be allowed up to October 18, 1968.

Organization also alleges a technical violation of the Agreement concerning the method of notification of position abolishment.

Rule 9(a)—(1) provides that the Employing officer or Supervising Official will notify the Local Chairman and the District Chairman, in writing, a detailed reassignment of remaining duties of a position to be abolished.

The Purchasing Agent addressed a letter to the General Chairman on April 1, 1968 advising of the abolishment of the four positions with a

carbon copy of this letter to the Local and District Chairman. Organization contends that such carbon copy did not constitute notification to the Local and District Chairman.

Webster's Dictionary defines "notify" as:

> "to make known, to point out, to give notice of or report of the occurrence; to give formal notice to" (Emphasis supplied)

while the word "notification" is defined as:

> "the act or an instance of notifying; a written or printed matter that gives notice." (Emphasis supplied).

We hold that the Local and District Chairman were notified when they were furnished copies of the letter addressed to the General Chairman.

The issue on the merits in this case is whether Carrier can assign work remaining after a fully covered position is abolished to a partially excepted (appointive) position which has been created pursuant to Rule 1 (f) of the Agreement.

The authority upon which Carrier relies to justify its action is Rule 9 (a) (4) (a) (formerly Rule 9 (g) (1)) which provides as follows:

"Rule 9 (a)—Abolishing Positions—

* * * * * * * * * *

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(4) 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:

(a) To another position or other positions covered by this agreement when such position or other positions remain in existence at the location where the work of the abolished position is to be performed.

* * * * * "

The more precise issue is whether these appointive positions are "positions covered by this agreement." Organization claims that they are not and that such an assignment violates Rule 1 (f), Rule 1 (g) and Rule 27.

Rule 1 (f) provides as follows:

"Exceptions:

"(f) APPOINTIVE POSITIONS—Certain positions designated as 'A' (Appointive positions), mutually agreed-upon between the Management and the General Chairman, within the scope of this agreement, are not subject to Rule 3 (a) and 6 and will be filled by Carrier appointment.

"Full consideration will be given to senior qualified Employes in making appointments to and displacements on these appointive positions. Employes now filing, or subsequently promoted to 'A' positions, will retain all seniority rights under this agreement."

We cannot agree with Organization that a transfer of work to an appointive position violates Rule 1 (f). This Rule gives Organization "veto" power over the creation of the position itself but does not limit Carrier's right to transfer work to the position. We agree with that line of cases which hold that the terms "position" and "work" are not synonymous. Although Organization's "mutual agreement" is necessary to establish the position it does not follow that it is necessary to allow work to be assigned to that position.

Organization contends that this holding will encourage Carrier to transfer work performed by totally covered positions to partially excepted positions. To this we can only say that Organization holds the power of "life and death" over the creation of these positions and therefore holds the lesser power to restrict the assignment of work to them at the time of its creation, as a condition of creation.

Organization also claims a violation of Rule 1 (g) which provides as follows:

> "(g) Positions or work within the scope of this Agreement belong to the Employes covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employes covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9 (g) (2) or by mutual agreement between the Management and the General Chairman."

This question is closely related to the precise issue stated above except that Rule 1 (g) contains another dimension. That Rule provides that no work will be assigned "to other than employees covered by **and as provided for in these rules** * * *". The question is whether the emphasized portion of that phrase imposes a more restrictive limitation upon Carrier's right to assign work than does Rule 9 (a) (4) (a) which merely provides that the work must be assigned to "positions covered by" the agreement.

A key to the meaning of this section is the exception from that Rule of Rule 9 (a) (4) (b) (formerly Rule 9 (g) (2)) and the omission as an exception from that Rule of Rule 9 (a) (4) (a) formerly Rule 9 (g) (1). The logic of Rule 1 (g) is that Rule 9 (a) (4) (b) must be excepted because "Agents Yardmasters," etc. are obviously not "* * * Employe covered by and as provided for in these rules * *." Without the exception there would be a conflict between the two Rules.

On the other hand the exception of Rule 9 (a) (4) (a) is unnecessary because "a position covered by this aggreement" is substantially the same as "an Employee covered by and as provided for in these Rules." Rule 1 (g) and Rule 9 (a) (4) (a) are in accord in their meaning.

Even if such were not the case Rule 9 (a) (4) (a) which specifically deals with Reduction in Force would control over the more general Scope provisions of Rule 1 (g).

The Agreement expressly provides that the appointive positions are "within the Scope of this agreement" (Rule 1 (f)) and are therefore, we think, "positions covered by this agreement" to which the remaining work could be transferred pursuant to Rule 9 (a) (4) (a).

We do not feel that Rule 27 (e) is applicable to this case because the case at hand involved the assignment of work from one position to a different po-

sition whereas Rule 27 (e) deals with the changing of the work duties of the same 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 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

Claimants are entitled to the relief requested up to October 18, 1968 but we find that there was no violation of the Agreement from and after that date.

A W A R D

Claim sustained to the extent as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1970.

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