Award No. 18811

Docket No. CL-18974

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6820) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1(a), 3-B-1(a), and 3-E-1(b), as well as the National Employment Stabilization Agreement of February 7, 1965, Article 3, Sections 1 and 2, beginning October 5, 1967, when the Carrier re-established the use of lodging facilities for Dining Car Department employes at the Service Building, 30th Street Yards, Philadelphia, Pa., but failed to re-establish the positions of Lodging Housekeeper and Janitor, but instead assigned the work to employes of another seniority district.

(b) H. C. Allen, relief employe, be paid a day's pay for each working day beginning October 5, 1967, and continuing until the violation is adjusted. (Docket 2368)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the former Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier respectively.

There was in effect a Rules Agreement, effective May 1, 1942, except as amended, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier (the former Pennsylvania Railroad) 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.

Effective February 1, 1968, the New York Central Company was merged into the Pennsylvania Railroad Company, and a new Company resulted, now

employes are classified as Group 2 employes of the Philadelphia Region Seniority District coming within the scope of the Agreement involved in this dispute.

On March 21, 1958, the crew quarters for Dining Car Service employes was closed, and thereafter overnight sleeping facilities for such employes were furnished at the Christian Street YMCA in Philadelphia Concurrent with this arrangement, the positions of Lodging Housekeeper and Janitor were abolished at the close of business March 20, 1958.

Effective August 21, 1967, the use of the sleeping facilities at the Christian Street YMCA by Dining Car Service employes was discontinued and in lieu thereof accommodations for such employes were provided at the existing Carrier-maintained, quarters located on the second floor of the Service Building at the 30th Street Yards, Philadelphia. In other words the train and engine and dining car facilities were combined and administered as a single facility.

By a letter dated January 4, 1968, from the Local Protective Chairman to the Dining Car Agent, Philadelphia, Pa., a claim was presented in behalf of Harry C. Allen, Vacation Relief Laborer in the Dining Car Department, Sunnyside Yard, Long Island City, New York, for eight hours pay each working day beginning October 5, 1967, such claim being premised upon a contention that certain rules in the applicable Agreement as well as Article 3, Sections 1 and 2 of the February 7, 1965 National Agreement were violated when the housekeeping and crew calling duties for Dining Car Service employes were assigned to employes of the Philadelphia Region Roster. The Dining Car Agent denied the claim by a letter dated January 22, 1968.

Thereafter, the Division Chairman docketed the claim with the Personnel Manager, Dining Car Department, and after discussion of the claim at a meeting held on March 11, 1968, the Personnel Manager denied the claim in a letter dated March 14, 1968.

On March 11, 1969, a Joint Submission was formulated in this matter, a copy of which is attached as Exhibit "A."

At a meeting held on April 16, 1969, the General Chairman presented the claim to the Director-Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Director denied the claim with his letter dated May 26, 1969, a copy of which is attached as Exhibit "B."

Therefore, so far as the Carrier is able to anticipate the basis for the Employes' claim, the questions to be decided in this dispute are whether the Agreement was violated when positions of Lodging Housekeeper and Janitor were not established incident to the use of lodging facilities by Dining Car Service employes at the Service Building, 30th Street Yards, Philadelphia, and even if so, whether the Claimant is entitled to the compensation which he claims.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintained crew quarters for Dining Car Service employes in Philadelphia until March 21, 1958. At the close of business on March 20, 1958 the positions of Lodging Housekeeper and Janitor were abolished because of the closing of the crew quarters.

Quarters for employes formerly accommodated at the closed facility were provided at the YMCA. On August 21, 1967 use of the YMCA for the Dining

Car Service Employes was stopped. The employes using the YMCA facilities are now accommodated at Carrier facilities maintained for train and engine employes.

The claim alleges a violation by Carrier of Rules 2-A-1(a), 3-B-1(a) and 3-E-1(b). It also alleges a violation of the National Employment Stabilization Agreement.

The alleged violations of the Agreement are within the jurisdiction of this Board and will be considered before dealing with the alleged violation of the National Employment Stabilization Agreement.

Rule 2-A-1(a) deals with the bulletining of new positions or vacancies. It is not applicable to the factual situation here, since the use of the existing company facilities did not create a new position or vacancy.

Rule 3-B-1(a) states the basic seniority provision of the Agreement, providing for a separate seniority district (unless otherwise provided) for each Operating Division and each System General Office Department. Such a rule may be given broad effect in a given case. This, however, is not such a case. The use of engine crew quarters by dining car employes is not a violation of Rule 3-B-1(a).

Rule 3-E-1(b) is the final rule which the claim alleges has been violated. That rule states:

> "(b) **When new offices or departments are organized to take over now being performed in other offices or departments or when consolidations, or other combinations or divisions of offices or departments are made,** the rearranging and the awarding of positions shall be by agreement between the Management and the General Chairman, provided, however, that in the case of work or positions not subject to the provisions of Rules 2-A-1 and 3-C-1, such work or positions shall be re-arranged and assigned solely by the Management, at its discretion." (Emphasis ours.)

The underlined portions of the rule make it clear that it is not applicable to the instant claim. No new office or department was organized. The work load of an existing facility was no doubt increased. It is clear, however, that no new unit was formed. Carrier has referred to the use of the existing facility as a "combination" in its handling of the case. That does not serve to make what has occurred a combination, as the term is used in the Agreement, any more than Carrier could make a combination which did occur any less so by its lack of use of the term. It is the facts which are determinative, not labels.

The facts are that Carrier changed from using a non Carrier owned facility to using one of its existing facilities. In the context in which this change took place it was not a "consolidation or other combination" as those terms are used in the Agreement.

The alleged violation of the National Employment Stabilization Agreement presents a different aspect of the case. That Agreement provides for a Disputes Committee and awards of this Board which are both numerous and persuasive have held that the forum for resolving such disputes is the Committee established under that Agreement.

Therefore, while the Board finds that there has been no violation of the rules referred to above, it further finds that the determination of the alleged violation of the National Employment Stabilization Agreement should be considered by the Dispute Committee established under that Agreement. (See Awards Nos. 16552, 17516 and awards cited therein.)

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, as discussed above.

AWARD

Claim dismissed, without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.

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