

RATIONALRAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21324  
Docket limber CL-21178

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( **Freight Handlers**, Express and **Station Employees**  
( Robert W. Blanchette, Richard C. Bond and John H.  
( **McArthur**, Trustees-of the Property of  
( **Penn** Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of **the System Committee** of the Brotherhood,  
GL-7794, that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968 particularly the Scope Rule, Rule .3-C-2 (a) **(1)** and the Extra List Agreement, by assigning clerical duties to those not covered by the Agreement, such as Train and Engine Crews preparing, verifying the reporting and release time of time cards. The Carrier also assigned Group One work to a Group Two **employee**.

(b) **W. R. Souders** and all others affected by the improper abolishment of Position G-342 each be allowed eight hours at the appropriate rate of pay for October 12, 1971 and continue for each consecutive date that the Carrier fails to correct the violation. (Docket 2745)

OPINION OF BOARD: This dispute is concerned with the aftermath of the abolishment of Position G-342 at Shire Oaks, Pennsylvania. That position, in which Claimant was the incumbent, was the third shift Crew Dispatcher position. All crew dispatching work was transferred, effective October 12, 1971 to West Brownsville, Pa. by transferring two of the four crew dispatching positions and abolishing **the remaining** two, including that at issue. As of October 12, 1971 there were four remaining positions at Shire Oaks: one Flexowriter Operator and three Group 1 **Extra List assignments**. The **Extra List Assignments** were moved to West **Brownsville** effective October 25, 1971 and the Flexowriter position was moved to Peters Creek effective **November** 23, 1971 leaving no Group **1** clerical positions at Shire Oaks. It is generally agreed that effective October 12, 1971 some of the functions of the Position G-342 were assigned to **and performed** by a Group 2 Extra List **employee** and some were performed by conductors and engineers.

The relevant rules are quoted in part as follows:

"SCOPE \* \* \* \* \*

When the duties of a position covered by this Agreement are composed of the work of **two** or more classifications herein defined in Groups 1 and 2, the classification or title of such a position shall be determined by the preponderance of the work **that is** assigned to such position."

**"RULE 3-C-2-ASSIGNMENT OF WORK**

(a) 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:

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

(2) In the event no position under this Agreement exists at the **location where** the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, For-, or other supervisory **employee**, provided that less than four hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory **employee**.

(3) Work incident to and directly attached to the primary duties of another **class or** craft such as preparation of **time** cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, 'may be performed by employee of such other craft or class.

(4) Performance of work by **employees** other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this **rule** (3-C-2) will not constitute a violation of any provision of this Agreement.

(b) Where the work of an abolished position is assigned to employees coming under the provisions of this' Agreement, such work, when it is practicable to do so, will be assigned to a position or positions with rates equal to or in excess of the position abolished.

(c) In the event the work of an abolished position is assigned to a Group 1 position or positions, the rate of which is less than the rate of the position abolished:

(1) An **immediate questionnaire** study may be made of the position or positions to which such work is assigned. The rate or rates determined by such study

will be made effective as of the date the work is assigned to the position or positions studied, with the understanding that **this will** not modify or **in any way** affect the **established practice** of applying rates determined by **questionnaire or questionnaire** study effective as of the date covered by such studies, except **when the** study is made under the circumstances specified **herein**.

(2) Where agreement covering the questionnaire method of **determining** rates of pay for Group 1 employee is not **in effect** a **study may** be made of the position or **positions** to which the work of the abolished position is assigned for the purpose of determining the proper rate of **such position** or positions, based on the comparability of the assigned duties thereof to the duties of other established positions in the same seniority district and the application of the rate or rates established on the basis of such study will be effective as of the date the work is assigned to the position or positions involved.

(d) In the event the work of an abolished position is assigned to a Group 2 position, the rate of which is less than the rate of the the position abolished, a study may be made of the position to which the work of the abolished position is assigned for the purpose of determining the proper rate of such position. The application of the rate established **on** the basis of such study will be effective as of the date the work **is** assigned to the position."

Petitioner's position is **grounded on** two distinct premises: On **October 12** there were remaining Group 1 positions at the location and the **residual work** of Position G-342 had to be assigned to **those** positions under Rule 3-C-2 (a); the work of **preparing, checking and approving E & T** service time cards had always been exclusively the work of Group 1 employee, specifically Crew Dispatchers at Shire Oaks. As corollary arguments it is alleged that the exclusivity theory does not apply to situations involving residual duties remaining from abolished positions and further that the Extra List Assignments constituted "positions" under the Agreement. Petitioner alleges an additional violation in that a Group 2 **employee from** the Extra List at Shire Oaks was required to perform the other remaining work of the abolished position.

With respect to the facts, **Carrier points** out that after October 12 there were no clerical positions in existence at Shire Oaks on the third shift and hence no covered employee who could have **performed** the work under any circumstances. Further, that as of November 22, 1971 there were no longer any regular clerical positions on any trick in any capacity left at the location.

Carrier also asserts, and it is not rebutted, that the only work assumed by train crew personnel after **position G-342** was abolished was the work of verifying the reporting and relieving times on train and engine service time cards. Carrier asserts that this type of work is not performed exclusively by clerks but by other classes of **employees**, primarily conductors and engineers, throughout the system.

There are **many peripheral issues** and a host of authorities cited by both parties in the arguments with respect to this dispute. However, the central and controlling question is whether Carrier applied Rule 3-C-Z properly. It is noted also, that **Carrier** asserts, and it is not denied, that less **than** four hours of work from **position G-342** remained at the location after the position was abolished (Carrier claims that it was less than an hour a day). From this latter **fact**, it is evident that such work could indeed be combined with the work of a Class 2 position under the terms of the Scope Rule (that portion cited above).

Contrary to Petitioner's position, the question of exclusivity is relevant to this dispute, **particularly** since it was raised by Petitioner. It suffices to observe that Petitioner made no attempt to establish **system-wide** exclusivity with respect to the work in question (**i.e.** verifying time cards) but asserted point exclusivity. This we cannot accept based on Long established principle.

The issue herein has surfaced on this property under these same Rules on many previous occasions and there are a host of awards relating to the problem. Under the **preponderant** opinion expressed by this Board Rule 3-C-2 was intended to preserve work which accrued **to the** employee covered by the Agreement but did not purport to grant work to the Organization's which had not been previously the exclusive work of clerks (see Awards 11963, 13159, 13921 and many others). This principle should be **considered stare decisis**. Since Petitioner has not established the exclusive right to the work performed by the train crew personnel and the remaining work performed by the Class 2 **employee** is minimal and permitted by the Agreement, the Claim must therefore be denied.

**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 Employee involved in this dispute are respectively Carrier **and Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not **violated**.

**A W A R D**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.