Award No. 4043
Docket No. CL-3917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, 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 that Rule 3-C-2 was violated when position Symbol A-56-B, Terre Haute, Indiana, St. Louis Division, held by Clerk Helen Groves, was abolished August 27, 1945:

(a) That this position be reestablished and that Clerk Groves and all other employes affected shall be compensated for all wage loss sustained.

(b) That Clerk Groves and all other employes affected be compensated for all work performed before or after their former tour of duty at the rate of time and one-half under the provisions of Rule 4-A-6.

(c) That Clerk Groves and all employes affected be compensated at the rate of time and one-half for all work performed on their former relief days, under the provisions of Rule 4-A-2.

(d) That Clerk Groves and all other employes affected be compensated for 8 hours' pay at the Pro Rata Rate for work not performed that was part of their former assignment under the provisions of Rule 4-A-3. (Docket W-403.)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, 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. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Effective August 27, 1945, clerical position, Symbol A-56-B, located in the Operating Office, Terre Haute, Indiana, St. Louis Division, rate of pay $181.96 per month (now $219.70 per month), tour of duty 4:00 P. M. to 12 Midnight, relief day Sunday, was abolished.

Prior to the abolishment of this position the incumbent was performing the following duties, which subsequent thereto were discontinued or assigned as follows:

(d) An extra employe notified or called to perform service will be paid at pro rata rate for actual time worked with a minimum of four hours, exclusive of the meal period. Such employe required to perform a total of more than six hours' service will be allowed a minimum of eight hours' pay at the pro rata rate.

(e) When employes paid on a tonnage or piece work basis are to be allowed compensation on the basis of time and one-half under the provisions of this Rule (4-A-6) the compensation allowed will be calculated in accordance with the provisions of Rule 4-A-1 (d)."

This provides the method of payment to regularly assigned employes who are required to perform work outside of their regular work periods. This rule is apparently cited by the Employes for the purpose of determining the amount of compensation payable to individual claimants if it is found that position Symbol A-56-B was improperly abolished. Obviously, the rule can have no bearing upon the basic issue in this case.

The Carrier submits, therefore, that in abolishing clerical position Symbol A-56-B at the Terre Haute, Indiana, Movement Office, it fully complied with the provisions of the applicable Agreement. Consequently, the claim of the Employes in the present case before your Honorable Board is without foundation and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreements Between the Parties and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that clerical position Symbol A-56-B in the Movement Office at Terre Haute, Indiana, was properly abolished and the work remaining thereon absorbed in accordance with the applicable provisions of the Agreement and that the Claimants are not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

(Exhibits not reproduced)

OPINION OF BOARD: On and prior to May 21, 1942, there was in existence on the Carrier's line, at Terre Haute, Indiana, a position of Powerman or Movement Director, the general duties of which were to facilitate the movement of trains in that district, and which included, as an incident to its primary duty, some clerical work. On May 21, 1942, probably due to

increased traffic, brought about by war activities, there was established a clerical position at Terre Haute, the primary duties of which were to assist or relieve the Movement Director in his work. It was designated as position Symbol A-56-B, and was assigned to an employe covered by the Clerks' Agreement, and continued until August 27, 1945, when, by the unilateral act of the Carrier, the position was abolished, and the work thereof, at that time being performed by the claimant, at that location, was partly discontinued, partly assigned to employes covered by the Clerks' Agreement, and the bulk of said work returned to the Movement Director, to be performed by him as he had handled the work before the Clerks' position had been established. There is no objection to the discontinuance of a part of said work, or to the assignment of part thereof to Clerks' positions, which at all times, and after said position was abolished, continued to exist in said office; but there was and is objection to the return of any part of Clerk's work to the Movement Director, an employe not covered by the Clerks' Agreement, it being contended that, so long as Clerks' positions were maintained at Terre Haute, the assignment of Clerks' work to the Movement Director, constituted a violation of the Agrement.

It is the contention of the petitioner that on May 21, 1942, an additional position under the Clerks' Agreement was established at Terre Haute, which, in the absence of an agreement to do so, could not be abolished so long as Clerks' work, to the extent requiring the work of such position, was performed in said office; and that if, for any valid reason, it became necessary to reduce the Clerks' force, the work of an abolished position remaining should be assigned in accordance with Rule 3-C-2 (a) and sub-section (1), (2), (3) and (4) thereof, all of which, on account of their controlling importance in this dispute, are incorporated herein.

> "3-C-2 (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:
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> (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.
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> (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, Foreman, or other Supervisory employe, provided that less than 4 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 Employe.
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> (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 employes of such other craft or class.
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> (4) Performance of work by employes 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."

The Carrier stresses sub-section (3) of the above quoted rule, and contends that it should govern this dispute, and, if we understand its position, that, no other part of the rule bears thereon, and, therefore, other provisions thereof need not be considered. If this were true, it would furnish a strong argument for its position. We think, however, that this contention is con-

trary to the accepted rule of interpretation of all contracts, that all parts thereof must be considered, and where possible, given effect and contrary to the Awards of this Division. Here the Rule 3-C-2 (a) covers the abolition of positions, and, where some work previously assigned to an abolished position remains to be performed, provides, in separate sub-sections, how it shall be assigned. We think these sub-sections must be considered together as forming one Agreement. Presumably, it was not intended that the rule should be construed in a manner to create conflict in its provisions, and we must, therefore, if possible, reconcile provisions in apparent conflict with each other.

It is clear from the docket before us that when claimant's position was abolished on August 27, 1945, there remained in Terre Haute clerical work previously assigned to it, to be performed. This is evidenced by the fact (1) that, after the abolition of claimant's position, a clerk's position remained in existence in that office; and (2) it appears that a part of the work of the abolished position was assigned to clerks which, in itself, conclusively shows that clerical positions under the Agreement remained at that location. This situation would seem to bring this case squarely within the provisions of sub-section (1) of Rule 3-C-2 (a). There can be no doubt of the meaning of sub-section (1). It provides that where work of the abolished position, previously assigned to it, remains, it shall be assigned to another position or positions within the Agreement, to be performed at the location where the work of such abolished position is to be performed.

Sub-section (1) is in no wise limited in its effect by sub-section (2) of the rule. Sub-section (2) covers the case where no position exists at the location where the work of the abolished position was performed which could perform the work of the abolished position. As we have seen, that is not the situation here presented. In such a case an agent, yardmaster, foreman, or other supervisory employe could do the work subject to the provisions therein contained. In the instant case, and in such a situation, the Movement Director, a supervisory employe, could have performed the work of the abolished position.

This leaves to be decided, the question of the proper construction and application of sub-section (3) of Rule 3-C-2 (a). It provides, in effect, that "work incident to and directly attached to the primary duties of another class or craft * * * may be performed by employes of such other craft or class" and, at first blush, would seem to be in conflict with sub-section (1) of said rule. But we think the conflict is apparent, rather than real. The underlying principle of Rule 3-C-2 (a) was to assure the work of a given position to the employes entitled to that work, under the Agreement, and the language of the Agreement, sub-section (1), giving that assurance is plain and unambiguous. That sub-section covers the case, as here, where other positions remain, which, under the Agreement, can perform the work. Sub-section (2) covers the case where no such position remains, and provides that certain named employes, and other supervisory employes, may do the work of the abolished position. Sub-section (3) extends the Carrier's right, and that of the employes of other crafts or classes, in such a situation by providing that members of other crafts or classes may do the abolished work. Sub-section (3) does not, in direct terms, make it apply to the situation covered by sub-section (2), but we think that intent may be implied from the whole of Rule 3-C-2(a). It would be strange, indeed, if after inserting sub-section (1) in the rule, the same parties would, on the same date, in the same Agreement, and in the same rule, insert another provision which, as to work directly incident to the employment of other crafts or classes, completely nullify the provision which first appears in the rule. We think sub-section (1) covers this case, and that sub-sections (2) and (3) cover situations where no position under the Agreement exists at the location where the work of the abolished position is to be performed.

Sub-section (4) of Rule 3-C-2 (a) does nothing more than to protect the carrier and employes alike in respect to work performed under the pro-

visions of sub-sections (2) and (3) of said rule, and need not be further considered.

It must be kept in mind that we are here dealing with a rule said to be peculiar to this and one other carrier. The question frequently arises as to the proper construction of other agreements, where a position is set up to do work which is incident to the work of other crafts or classes, and such position so set up is abolished. Many awards cover this question, but it is unnecessary to deal with them here. The controlling rule 3-C-2 (a) sets at rest this question, so far as this Carrier is concerned. The rule covers work previously assigned to an abolished position, and undertakes to provide how the work of such position shall be assigned. Therefore, the question of the incidence of work to the primary duties of other crafts and classes can only be considered in the manner provided in sub-sections (2) and (3) of Rule 3-C-2 (a).

Recent Awards of this Division have dealt with Rule 3-C-2 (a). See Awards Nos. 3583, 3825, 3826, 3871, 3877 and 3906. The views we have here expressed are in line with the uniform holdings of said Awards. In Award No. 3871, it was said:

> "Carrier relies chiefly on sub-paragraph (3). But that sub-paragraph is not an independent rule of the Agreement. It is an interdependent provisions of 3-C-2 (a) and relates back to (a) and must be construed with (a) * * *."

When we follow this holding, as we do, and consider Rule 3-C-2 (a) in its entirety, and as one rule, we find that all deal with work previously assigned to a position which has been abolished. Sub-section (1) deals with a situation where some of the work of the abolished position remains to be performed at the location involved and positions remain which can perform such work; sub-sections (2) and (3) deal with situations where no such positions exist, and (2) says certain supervisory employes may, under certain conditions, perform remaining work, and under (3) members of other crafts or classes outside of the supervisory employes referred to in sub-section (2), may perform the same, if directly incident and attached to their primary duties. This construction of the Agreement answers the Carrier's contention that the position of the petitioner, if sustained, would make sub-section (3) meaningless. Sub-section (2) only applies to the positions referred to therein, while (3) is much broader in its scope and meaning. Both are necessary to cover all situations which might arise, and, in our opinion, supplement each other.

Point (a) of the claim is that the position involved be restored, and that employes affected, including the claimant, be compensated for all wage loss sustained from the alleged violation of the Agreement; and point (d) of the claim asks for the same compensation at pro rata rate of pay. The docket does not present a case for sustaining points (b) and (c) of the claim. We do not understand that this Division possesses the power to order a restoration of the position abolished. See Awards Nos. 1300, 3583 and 3906. The Carrier may avoid future penalties by a compliance with the Agreement in ways other than the restoration of the abolished position. Therefore, claim (a) is sustained in principle; claim (d) is sustained; and claims (b) and (c) are denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and 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 Carrier violated the Agreement in the respects noted in the Opinion.

AWARD

Claim (a) sustained in principle.

Claim (d) sustained.

Claims (b) and (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.