Award No. 4045

Docket No. CL-3982

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:

(a) The Carrier violated the Clerks' Rules Agreement in the abolishment of positions of stores department employes, effective February 21, 1946, at WJ Repair Yard, and at East Altoona Enginehouse, Altoona, Pa.

(b) The positions should be re-established and all stores department work be restored to our class or craft.

(c) E. E. Nelson, Store Attendant, Thelma Houp, Truck Driver, Mary Calderwood, C. J. Emerick, Genevieve Younkin, Laborers, and all other employes affected, be compensated for all monetary loss sustained. (Docket E-288)

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.

On April 25, 1935, Store Delivery Service was placed in effect at WJ Repair Yard, Altoona, Pennsylvania, and similar service was placed in effect on November 19, 1935, at East Altoona Enginehouse, Altoona, Pennsylvania.

As a result of establishing Store Delivery Service, it was understood and agreed that, in maintaining this service, the work pertaining thereto would accrue to the Stores Department employes, which employes are subject to our Rules Agreement.

This service was set up to have Stores Department employes make the rounds of the WJ Repair Yards and East Altoona Enginehouse, collect MP-151 orders for filling to the Storehouse or working bins, which are also serviced by the Stores Department employes, and deliver the ordered material to the actual point of work.

On February 18 and 19, 1946, respectively, the Management placed the following notices on the Bulletin Board:—

grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties thereto 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 such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement between the parties to this dispute, that in discontinuing the so-called "Stores Delivery Service" method of handling material between the working stock bins and the actual location where the work was to be performed by Maintenance of Equipment Department employes at East Altoona Car Shop and Enginehouse, it complied with the provisions of the applicable Agreement, and that the subsequent performance by the various crafts or classes of Maintenance of Equipment Department employes engaged in maintenance and repair work at those points in the handling of their own material from the working stock bins to the actual work location was incidental to and directly attached to the primary duties of their crafts or classes, and was not work which accrued exclusively to the Stores Department employes, of which craft or class the Claimants were members, and, therefore, no violation of the Agreement occurred.

It is, therefore, respectively submitted that the claim is not supported by the applicable Agreement and should be denied.

OPINION OF BOARD: The controlling facts in this case are covered by a joint statement of the parties, and are not in dispute. The question in issue is the interpretation of Rule 3-C-2(a) of the Clerks' Agreement, and, in substance, we have presented here the same questions which were dealt with by this Division in its awards Nos. 4043 and 4044 this day made.

The Carrier now maintains, and over a long period of time has maintained, in its yards at Altoona, Pennsylvania, extensive repair shops, operated under its Mechanical Department; and, in connection therewith, maintains, and has maintained, a supply store, which, in general is operated by employes covered by the Clerks' Agreement, which, of course, is an agreement different from that under which employes of the Mechanical Department work. When need for supplies develops in connection with repair work, it becomes necessary to obtain such supplies from the supply store, and to transport the same from the store to the repair shop, located nearby, and in the same yard. Prior to April 25, 1935, employes of the Mechanical Department did this work, but, effective on said date, positions were established in the Stores Department to do such delivery work, and employes of that department, working under the Clerks' Agreement, were assigned thereto, although, on occasions, and on some tricks, employes of the Mechanical Department continued to perform some of such work. This situation continued until February 21, 1946, when the Carrier, by unilateral action, abolished the positions in the Stores Department which had theretofore performed such work, and transferred or restored the same to employes of the Mechanical Department. This claim is filed on behalf of the employes in the Stores Department, whose positions were thus abolished. It is agreed that after said positions were abolished, clerks working under their agreement still remained and worked their positions in the Stores Department, and the petitioner contends that the abolition of said positions constituted a direct violation of Rule 3-C-2(a) of the Clerks' Agreement, and, particularly, subsection (1) thereof. The Rule, in its entirety, reads:

"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:

(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, 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.

(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.

(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."

It is argued by the Carrier, that inasuch as the delivery work above referred to was, primarily, work belonging to the Mechanical Department, and so classified and assigned prior to April 25, 1935, the return of said work to employes of that department, as was done in this case, was not a violation of the Clerks' Agreement. The awards of this Division are not in accord on this question, but it is fair to say that some of them uphold the Carrier's contention in that respect, where the agreement being considered does not specifically provide against such practice. But those awards give us little aid when we are called upon to deal with an agreement, which, in our opinion, does not permit such a practice. We have here a rule peculiar to this Carrier and one other, and as we have heretofore said, agreements are supposedly intended to be kept; therefore, we must deal with this dispute under the agreement of the parties which covers it.

Whatever may be our opinion as to whether the delivery work aforesaid was or was not, primarily, work belonging to employes of the Mechanical Department, working under their agreement, when the same was assigned to employes working under the Clerks' Agreement, on April 25, 1935, the fact remains that on that date it was transferred, except in special instances, to employes working under the latter agreement, and we are, therefore, called upon to deal with the dispute, here presented, under that agreement.

Rule 3-C-2(a) covers work previously assigned under the Clerks' Agreement, where a position performing that work is abolished. Here work was assigned to positions which were subsequently abolished, and this brings the case within that rule. The rule then provides how the work of the abolished position or positions remaining at the location where said work is to be performed, shall be assigned. Sub-section (1) of the rule provides that such remaining work shall be assigned "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." This is a plain and simple statement, the intent and meaning of which cannot, reasonably, be doubted, and must be applied to this dispute.

But the rule does not stop there. It was, no doubt, anticipated that, where positions were abolished, situations would arise where work would remain with no position in existence, at the location where the remaining work of the abolished position was to be performed, which could perform such work. To cover such a situation, sub-sections (2) and (3) were incorporated in the rule. By sub-section (2) it was provided that, under stated conditions, Agents, Yard Masters, Foremen, and other supervisory employes might do such work; and by sub-section (3) it was provided that, under certain stated conditions, employes of other classes or crafts might do the work. No question of a supervisory employe doing any of such work is here involved. In this case the work of the abolished positions was assigned to employes of another class or craft, and this could only be done under sub-section (3). The question is, therefore, whether, under the agreement, and considering Rule 3-C-2(a)

thereof as a whole, sub-section (3) can be applied to the admitted facts of this case.

In the first place, Rule 3-C-2 (a) must be considered as a whole. In interpreting agreements we consider all parts thereof in an effort to reach their true intent and meaning. As stated above, sub-section (1) is clear and explicit, and furnishes the principle and philosophy sought to be established, a principle not out of line with the general rule of all labor agreements, that the employes of a particular class or craft are entitled to perform the work attached thereto. So long as positions, working under the Clerks' Agreement, at the location where the work of the abolished positions was to be performed, were in existence, they were entitled to do the work of the positions abolished. Only in situations where no such positions are in existence, can sub-sections (2) and (3) of the rule be applied. Sub-section (3) does not specifically so state, but we think it is necessarily implied, because we do not believe we should construe the agreement in such a way as to create an unreconcilable conflict in its provision, if such construction can possibly be avoided. Giving the rule the construction we follow, its provisions are reconciled, and each thereof given effect, which, we are persuaded, was what the parties thereto intended.

We are of the opinion that the Carrier violated the agreement in the respects noted in this opinion, and it follows that claims (a) and (c) should be sustained. Claim (b) asks that the abolished positions be re-established. If this be interpreted to mean only that they shall be restored to the Clerks' roster, with proper seniority rating, only to do such work as their positions entitled them to perform, when there is work to do, this claim should also be sustained. On the other hand, if the Carrier can do the work of the abolished positions by the use of the remaining employes working under the Clerks' Agreement, it should be permitted to do so. So long as the work of the abolished positions is performed by employes working under the Agreement, in line with their seniority rights, there is no violation thereof. This, however, does not affect the right of claimants to be compensated for time lost, at the pro rata rate of pay, so long as employes of other classes or crafts do the work which positions under the Clerks' Agreement are entitled to perform.

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 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 violated by the Carrier in the manner stated in Opinion.

AWARD

Claim (a) sustained.

Claim (b) sustained in accordance with Opinion.

Claim (c) sustained at pro rata rate of pay.

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.