Award No. 4446
Docket No. CL-4385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee.

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Wage Agreement, Scope Rule and other provisions of the Clerks' Agreement when it abolished a Ticket Clerk Position, Symbol No. 181, located at Valley Stream, N. Y. and

2. The Carrier shall restore Ticket Clerk Position, Symbol No. 181, with the position rate of $236.32 per month, and

3. The Carrier shall pay the last incumbent of position F-181, $204.70 per month, from June 1, 1947 to September 1, 1947, and $236.32 per month after September 1, 1947, and shall pay the affected Extra Clerk, for each day unassigned, and at prevailing rates, retroactive to June 1, 1947.

EMPLOYES' STATEMENT OF FACTS: Under date of January 14, 1943, the General Manager authorized the establishment of a new Ticket Clerk position, Symbol No. F-181, at Valley Stream, N. Y., making two regular established positions at this Station. Position F-54 with assigned hours 6:30 A. M. to 3:10 P. M. and position F-181 with assigned hours 2:00 P. M. to 10:00 P. M. A Questionnaire study was made of position F-181, in conformity with the Wage Agreement of July 1, 1941, which produced a rate of $148.60 per month. The study was made during April 1943, and approved by the organization and management. Quoted below is the items of work performed and the time required on each item for a period of 208 hours:

"ITEM NO.	STATION OPERATION	HOURS	MINUTES
126	Entering, commencing and closing numbers and rates on tour sheets	6	30
127	Making extensions for tickets sold on tour sheets	15	
129	Selling, or redeeming local, commutation or Pullman tickets, and exchanging tickets for government or other transportation orders	149	
130	Selling or redeeming interline tickets and exchanging tickets for government or other transportation orders	3	

It will be seen that the scope rule provides no support for the Employes contention.

No other specific provision of the Agreement is mentioned by the Employes. They do, however, refer to "other provisions of the Clerks' Agreement". The only provision of the Agreement which refers to the abolishment of positions in Rule 4-G-2, reading as follows:

> "4-G-2. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules."

The Carrier discontinued position F-181, but it did not create any new position, but, on the other hand, it assigned the duties which remained at Valley Stream to clerical position F-54; consequently, no possible construction of the situation could be made that this rule was violated.

It is respectfully submitted that the Employes' contention is without merit and should be dismissed.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreement 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 Schedule of Regulations which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of interpretations or application of agreements concerning rates of pay, rules and 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 and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties of the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that in abolishing the position of clerk at Valley Stream, and assigning the remaining duties of that position to other clerks, it acted strictly in accordance with the Agreement. The Carrier has further shown that the collection of cash fares by passenger trainmen does not involve a violation of the Agreement. Therefore the Carrier submits that there is no violation of the Agreement and respectfully requests your Honorable Board to deny the claim of the employes in this matter.

OPINION OF BOARD: The Brotherhood contends Carrier violated the provisions of their Agreement when it abolished Ticket Clerk's position, Symbol No. 181, located at Valley Stream, New York, and asks that the position be restored and pay for the last incumbent thereof and the affected extra clerk for each day it was unassigned, retroactive to June 1, 1947.

Prior to March 1, 1943 the Carrier, at its Valley Stream, New York, station, had one established Clerk's position to sell tickets, being position Symbol No. F-54 with assigned hours from 6:30 A. M. to 3:10 P. M. Effec-

tive as of March 1, 1943 the Carrier established a second Clerk's position at this station for the purpose of selling tickets, being position Symbol No. F-181 with assigned hours from 2:00 P. M. to 10:00 P. M. thereby providing ticket sales service at this station from 6:30 A. M. to 10:00 P. M. In April of 1943, pursuant to and in conformity with the Wage Agreement, a questionnaire study of the new position was made to determine the salary thereof, retroactive to the date established. These two positions continued until the Carrier abolished position F-181 effective as of April 27, 1946. This left position Symbol No. F-54 remaining at this station with assigned hours from 6:40 A. M. to 3:15 P. M. and ticket selling services available to the public from 6:45 A. M. to 10:52 A. M., and from 11:22 A. M. to 3:00 P. M. It is the action of the Carrier in abolishing position Symbol F-181 that is the basis of the claim here made.

Work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms but if the amount of work decreases ordinarily the carrier can reduce the number of positions to an amount sufficient to properly handle the work.

However, here the Clerks do not have the exclusive right to this type of work except when the tickets are sold at stations of the Carrier, which is not necessarily round the clerk service, for admittedly the crews of passenger trains have always been permitted to collect cash fares in lieu of tickets, and it is apparent that tickets could always be purchased in the Pennsylvania Station, New York, good on Carrier's trains.

Therefore, although the abolishing of this position may cause some increase in the amount of this work being done by these groups, nevertheless, such is not necessarily a violation of the Clerks' Agreement if the action taken by the Carrier is reasonable.

Carrier contends that a second Clerk was no longer needed at this station to sell tickets because of the decrease in business. Ordinarily the Carrier will not be required to employ a greater force than is necessary in the efficient handling of it business. The determination of such matters is the prerogative of management and rests primarily with it except to the extent it has limited itself by contract. The Agreement before us does not nullify this prerogative of Management under the facts established in the record.

Considering the several approaches made to determine the factual situation as to whether or not such a decrease in the amount of this type of work actually took place at this station so as to reasonably justify the Carrier's abolishment of one of the two positions of Ticket-Clerk we think, because of the circumstances shown in the record and also presented at the hearing, that the total number of tickets sold in the year before and the years immediately following the abolishing thereof is nearer a correct basis of measuring that fact than the amount of cash turned in by passenger crews, the number of commuter or other tickets sold, the number of tickets sold by the occupant of each position during a period when both positions were in effect, the total revenue collected at the station, or the fact that there was no practical change in the train service.

We find the decrease in the number of tickets sold at this station, as evidenced by the number sold before and immediately following its being abolished, justified the action taken by the Carrier and that no violation of the parties' Agreement resulted therefrom.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary.

Dated at Chicago, Illinois, this 12th day of July, 1949.