

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE LONG ISLAND RAIL ROAD COMPANY

(David E. Smucker and Hunter L. DeLatour, Trustees)

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

1. The Carrier violated the provisions of the Clerks' Agreement, when it abolished positions or reassigned work, removing such work from the jurisdiction of one seniority district and assigning it to employees in another seniority district, and

2. The Carrier shall restore and confine all work of a seniority district to that district and no other, and

3. Shall pay each affected employee who is required to perform work of two or more seniority districts, a day's pay, at prevailing rates, for each day and for each separate kind of work performed, as designated by seniority districts, Rule 3-B-1, and pay the affected unassigned employee a day's pay for each day unassigned, retroactive to January 1, 1948.

EMPLOYEES' STATEMENT OF FACTS: Protests and claims were made and progressed up to the highest officer of the Carrier. The following situations that brought about this dispute are listed below:

Great Neck—At this location a baggageman is regularly assigned from 12 midnight to 8:30 A.M. During his tour of duty he is required to perform Station Cleaner's work, consuming an average of 2½ hours per day in such work.

At this location a Station Cleaner is also employed from 7:00 A.M. to 4:00 P.M. During the latter's tour of duty he is required to handle mail and baggage daily, meeting trains arriving at 9:19 A.M. 10:12 A.M. and 11:16 A.M. and consumes in all approximately four hours, for which service he is allowed four hours at the Station Baggageman's rate. In addition, another Station Baggageman is employed at this location whose tour of duty is from 12:00 Noon to 8:00 P.M. The latter confines his services to the duties of a Station Baggageman during his entire tour of duty.

Huntington—The Warehouseman's position, tour of duty 8:00 A.M. to 5:00 P.M. with 1 hour for lunch, was abolished at this location on August 19, 1947. The duties normally performed by the Ware-

Award 3587—Concerns the use of Track Laborers to perform clerical work and is not, therefore, pertinent to the issues involved herein.

Award 3656 is similar in principle to Award 3582. In the case covered by Award 3656, the assigned hours of the first trick Crew Caller, a Group 2 (Miscellaneous) employee were set back in order to provide necessary augmentation of the last trick crew Calling Force and the work previously performed by the first trick Crew Caller a Group 2 (Miscellaneous) employee, during the last two hours of his assignment was thereafter performed by the Crew Dispatcher a Group 1 (Clerical) employee and it is not, therefore, pertinent to the facts here involved. However, attention is directed to the fact that it was agreed that the first trick Crew Dispatcher had previously performed "a certain amount of crew calling while he was on duty" (emphasis supplied) indicative that the parties recognized that a Group 1 (Clerical) position may include some Group 2 (Miscellaneous) work.

(Exhibits not reproduced).

OPINION OF BOARD: The parties are not in disagreement as to the facts regarding the abolishment and reassignment of work at the stations involved in this claim. A joint statement of facts was signed by the parties and is set forth in the record. In brief, these facts show that at Great Neck employees are performing some work of a classification which by the agreement is allocated to seniority districts in which these employees hold no seniority; and at other stations the Carrier has abolished positions and assigned the work remaining in such positions to employees who did not have seniority rights in the district to which such work was allocated. The contention of the organization is that when the Carrier abolished positions, if there was work remaining, it had to be performed by employees holding seniority in the district in which the agreement allocated the work; that unless such work was assigned to the seniority district to which it was allocated by Rule 3-B-1 of the Agreement and performed by employees holding seniority in such district, it was a violation of the agreement.

It has long been settled that seniority is a valuable property right. In order for seniority to be of value, it must be that the parties intended employees in a seniority district to have prior right to perform all work falling within the classifications covered by a seniority district. Any other construction of seniority provisions of a contract would admit of the possibility that work assigned under the contract of one seniority district could be transferred to others so that seniority as a prior right to work would be nullified. This Division has held in a number of awards that work of one seniority district may not be assigned to employees in another. Award 4534. In Award 1808, this Division, with Referee Thaxter assisting, in its Opinion, said:

"* * * It is well settled that a Carrier in discontinuing a position, not only may not assign the work to those outside the Scope of the Agreement, but is not permitted to assign it even to those covered by the Agreement if they hold seniority rights exclusively in another seniority district * * *."

And the Board in Award 2050 said, "* * * that positions or work may not arbitrarily be removed from the confines of one seniority district and placed in another * * *."

On this property the Agreement provides in Rule 4-G-2 that "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 evading the application of these rules." A discontinued position with work remaining assigned to another seniority district would be counter to the purpose of this rule.

The rules also designate separate seniority districts with separate seniority prevailing in each district (Rule 3-B-1) and this rule also describes, by classes,

the work to be done in each district; and Rule 3-E-1 restricts seniority to the district in which employed on the elective date of the Agreement.

Rule 4-G-1 provides that positions and not employees shall be rated for pay purposes. In fact, it is significant that the rules respecting classification, work, seniority and rates all relate to positions.

The Carrier has the right to abolish a position, and may do so arbitrarily when the work of the position has ceased to exist; but under the rules on this property and in accordance with the principles stated in the awards above cited as examples, the employees, by reason of their seniority, have a vested valuable right in the work encompassed in their district. If work remains when a position is abolished, such work then, in accordance with its classification, must be given to the seniority district to which such work by the Agreement has been assigned.

Provision is made in the contract (Rule 9-A-1) for exception to the established Rules to be made by agreement of the parties. A precedent cited by the Organization shows that when a position is created combining the work of two or more seniority districts that it was done by agreement. This supports the contention of the Organization that the parties understood that such arrangement could not be made by the Carrier without consultation and agreement.

We have concluded, therefore, that by the terms of the agreement between the parties the Carrier, except by agreement with the Organization, may not abolish a position when work remains and assign such work to a position performed by an employee holding no seniority for such class of work.

This Board is without authority to require the Carrier to reestablish any position; for the Carrier may be able to comply with the Agreement by assigning the work in a manner that will be in conformance with the Agreement. Awards 4044, 3906.

The agreed statement of facts does not show that a position was abolished at Great Neck. In fact, there is nothing to show that the situation described here has not existed since the effective date of the agreement. There is no provision in the contract to require the Carrier to reassign the work of positions that were in existence at that time so long as they remained unchanged. The claim, therefore, in so far as it relates to the positions of Baggage men and Station Cleaners at Great Neck should be remanded to the property to determine whether there were reassignments of these positions since the effective date of the Agreement.

The statement of facts shows that positions at Huntington, Riverhead, Bay Ridge, Farmingdale and Flushing-Main Street were abolished and the work was given to employees not holding seniority in the seniority districts to which the Agreement allocated such work. This was done without agreement of the parties and is a violation of the rules of the Agreement.

It was stated in argument and it is admitted by the Organization that doing work of one class incidental to the primary job does not affect seniority districts, and our findings here are not to affect such practices.

Under the facts of this case we believe that the employees who were adversely affected by the violations of the agreement were the employees who were unassigned and denied work by reason of the wrongful allocation of work to employees not holding seniority for such class of work. Claim 3 should, therefore, be allowed only to such extent.

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 Employees involved in this dispute are respectively Carrier and Employees 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 when it removed work of one seniority district and assigned it to employees of another seniority district.

AWARD

Claims 1 and 3 sustained per the Opinion and Findings.

Claim 2 denied per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of August, 1950.