

Award No. 5541
Docket No. CL-5572

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly Rules 3-C-2 and 3-E-1, when clerical position, Symbol No. F-13, held by R. L. Doremus, St. Julian Freight Station, Norfolk, Va., Delmarva Division, was abolished effective April 3, 1948.

(b) The position should be restored in order to terminate this claim and R. L. Doremus and all other employees affected by the abolishment of this position should be restored to their former status and be paid a day's pay for each working day until adjusted, at the appropriate rate as a penalty in accordance with Rules 4-A-1, 4-A-2, 4-A-3, 4-A-6, and 4-C-1, and be reimbursed for all expenses sustained in accordance with Rule 4-G-1(b). (Docket E-563)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class of craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees 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, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case is an employee who held a regular position of Clerk, Symbol No. F-13, fully covered by the Scope and all of the provisions of the Rules Agreement, at the St. Julian Avenue Freight Station, Norfolk, Va., and having seniority standing in Group 1 on the seniority roster for the Delmarva Division.

Effective April 3, 1948, Clerical position, Symbol No. F-13 was abolished. There remained in existence a number of other clerical positions at this

The Carrier contends that the claim for "all other employes affected" is improper and must be denied for it does not comply with Rule 7-B-1 (a) nor with the provisions of the Railway Labor Act.

In summary, it is the Carrier's Position that the work previously assigned to the abolished position was properly assigned to other positions covered by the applicable Agreement. The Carrier assigned the work so that it could be performed as efficiently and economically as possible — a responsibility with which the Carrier is charged by the Interstate Commerce Act. It is self-evident that a common carrier in attempting to serve the public efficiently must be able to assign and reassign its work so as to keep pace with improved work procedures and to vary its work procedures as the needs of the service vary. Of course the Carrier may not violate existing collectively bargained agreements, but the Carrier suggests that in interpreting existing rules of an Agreement it is reasonable to assume that the parties to the Agreement, in writing the rules, understood that a common carrier is charged with a public responsibility, that both parties desired, among other things, to facilitate efficient and economical service, and that such an intent should be borne in mind when construing any particular rule. The Carrier submits that in abolishing clerical position Symbol F-13 at St. Julian Avenue Freight Station, Norfolk, Virginia, it fully complied with the provisions of the applicable Agreement, particularly Rules 3-C-2 and 3-E-1. Consequently, the claim of the Employees 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 Agreement 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 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 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 Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement 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 the work of the abolished clerical position was properly assigned and the Claimants are not entitled to the compensation which they claim.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held a regular position of Clerk, Symbol No. F-13, at the St. Julian Avenue Freight Station, Norfolk, Virginia. On April 3, 1948, the position was abolished. The Organization contends that this was in violation of the Clerks' Agreement and constitutes the basis for the claim here made.

Some of the work of the abolished position to be performed at the St. Julian Avenue Freight Station was assigned to other clerical positions at that point. Other duties of the position were assigned to clerical positions at Norfolk Yard and the Philadelphia Billing Bureau, the latter point being in a different seniority district. The applicable rules so far as they are pertinent to the facts of this case provide as follows:

"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."

"Rule 3-E-1. (a) Employees whose positions are transferred to another seniority district will, if they choose to follow such positions, carry their seniority with them and will retain and continue to accumulate seniority in their home seniority district. Employees not electing to follow their positions may exercise seniority in their home seniority district under Rule 3-C-1."

When the position, Symbol F-13, was abolished one hour of the work of that position was assigned to a clerk at St. Julian Avenue Freight Station, two hours and fifteen minutes of it were assigned to the Assistant Chief Clerk, Norfolk Yard, and the remaining four hours and forty-five minutes of work were assigned to the Philadelphia Consolidated Billing Bureau. It is urged that the assigning of this amount of work to the Billing Bureau constituted a transfer of the position, Symbol F-13, to another seniority district within the meaning of Rule 3-E-1 (a). We think not. Position, Symbol F-13, was abolished and no new position was created in the Billing Bureau. While a clerk is defined in the Agreement as an employee who regularly devotes no less than four hours per day to work incidental to keeping records and accounts, it does not mean that four hours of such work constitutes a position. The transfer of four hours and forty-five minutes of clerks' work does not of itself indicate that a position has been transferred. There was no violation of Rule 3-E-1 (a).

It is urged that Rule 3-C-2 (a) (1) was violated when the work of position, Symbol F-13, was assigned to positions at Norfolk Yard and the Philadelphia Billing Bureau for the reason that these positions were not at the location of the abolished position. The rule states that the remaining work of an abolished position may be performed by remaining positions in existence at the location where the work of the abolished position is to be performed. We think this means that such work may be performed by the occupants of positions doing the same class of work at the location of the abolished position. This Division has so held on several occasions. See Awards 3583, 3877, 4044, 5436.

It is not disputed that the four hours and fifteen minutes work was transferred to another seniority district when it was assigned to the Philadelphia Billing Bureau. We have repeatedly said that this could not properly be done except by negotiation. Awards 1808, 4076, 4653, 5375, 5397.

The penalty to be imposed for the violation of the Agreement must be for the improper abolishment of position, Symbol F-13. The occupant of the position at the time it was abolished has a valid claim for his loss of earnings, including any expenses to which he is entitled under Rule 4-G-1 (b), growing out of the improper abolishment of the position. Other employees who may have suffered loss directly because of such violation are entitled to be compensated for such loss. The demand that the position be restored is

denied. The abolishment of positions and the assignment of the remaining work thereof is the prerogative of management and not of this Board. The rights of employees are limited to the filing of claims during the period that the Agreement violation exists.

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 Agreement was violated.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.