

Award No. 5560

Docket No. CL-5571

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

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**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 Rules Agreement, effective May 1, 1942, particularly Rule 3-C-2, when clerical position, Symbol No. G-188, rate of pay \$247.32, held by W. D. Goodwin, Yard Office, West Morrisville, Pa., New York Division, was abolished effective April 13, 1947.

(b) The position should be restored in order to terminate this claim and W. D. Goodwin, Clerk, 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 N-211)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or 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 referred to herein from time to time without quoting in full.

The Claimant in this case is an employee holding a regular position of Clerk, Symbol No. G-188, rate of pay \$247.32, fully covered by the Scope and all of the provisions of that Rules Agreement, and having seniority standing in Group 1 on the seniority roster for the New York Division.

This position in question was located in the Yard Office, West Morrisville, Pa., New York Division. Effective April 13, 1947 the position was abolished. The duties of this position involved about two hours daily of taking yard track checks, about three hours daily of yarding and classify-

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 shown that under the applicable Agreement the clerical position herein involved was properly abolished, and the Claimants are not entitled to the compensation which they claim.

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

(Exhibits not reproduced.)

**OPINION OF BOARD:** On April 13, 1947, Clerical Position Symbol Number 188, West Morrisville Yard, was abolished. The remaining work was assigned to the Yard Master, there being no clerical positions remaining at this Yard. On August 26, 1947, due to an increase in business an unassigned Yard Master was assigned to assist the Yard Master. The Organization contends that a Clerk should have been assigned. The applicable portions of the controlling rule provide:

"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) \* \* \*

(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 Employee."

Rule 3-C-2 (a), current Agreement.

\* \* \* \*

An examination of the record reveals that less than four hours of clerical work remained at West Morrisville Yard when the last clerical position was abolished. It was properly assigned to the Yard Master in accordance with Rule 3-C-2 (a). We think, however, that the Carrier violated the Agreement when it assigned an unassigned Yard Master to aid the Yard Master. While the record indicates that the Assistant Yard Master performed only the duties of a Yard Master, it is evident that by relieving the Yard Master of Yard Master's work, it made it possible for the Yard Master to perform the Clerk's work, which had been assigned to him. It is the Clerk's work and not the duties of a Yard Master which should have been assigned to another employe. The Carrier may not do indirectly that which it cannot do directly. The Carrier may not under the controlling rules abolish a Clerk's position and assign the remaining duties to a Yard Master and then, when the Yard Master's work becomes too burdensome, relieve him of Yard Master duties in order that he can continue to perform the Clerk's work which has been so assigned to him. Such handling violates the plain intent of the rule by following a method which appears to be in accordance with rules but when in fact permits that to be done which the Agreement was intended to prohibit.

**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 from October 18, 1947 to March 15, 1948 at the rate Claimants would have received if position Symbol No. G-188 had not been abolished, including any expenses shown to be within Rule 4-G-1 (b).

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 15th day of November, 1951.

#### DISSENT TO AWARD NO. 5560—DOCKET NO. CL-5571

This claim was sustained on the basis of a conclusion reading in part:

"We think, \* \* \* that the Carrier violated the agreement when it assigned an unassigned Yard Master to aid the Yard Master. While the record indicates that the Assistant Yard Master performed only the duties of a Yard Master, it is evident that by relieving the Yard Master of Yard Master's work, it made it possible for the Yard Master to perform the Clerk's work, which had been assigned to him."

Rule 3-C-2 (a) does not prohibit the abolishment of a clerical position. It provides in paragraph (2) that the work of the abolished position may be performed by a Yard Master, providing less than four hours' work per day remains to be performed, etc. The record shows clerical work by the Yard Master to be approximately three hours per day.

This Board has no authority to regulate the number of yard masters employed.

In our opinion the Award is contrary to and in total disregard of the plain provisions of Rule 3-C-2 (a).

For these reasons we dissent.

/s/ R. M. Butler  
/s/ R. H. Allison  
/s/ C. P. Dugan  
/s/ J. E. Kemp  
/s/ A. H. Jones