Award No. 6313
Docket No. CL-6256

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

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

1. That the Carrier violated the rules of the Clerical Agreement and agreed upon Memorandum of Understanding when on August 10, 1951, position of Depot Hand at Pine Grove, Pennsylvania was abolished.

2. That position be restored and the incumbent, Norman J. Mengle, the Group #2 incumbent of position of Depot Hand at Pine Grove, and all other employes adversely affected be compensated for any monetary wage loss sustained by the improper abolishment.

EMPLOYES' STATEMENT OF FACTS: On Saturday, August 4th, 1951, the Superintendent of the Reading Division of the Reading Company wrote the Division Chairman of the Brotherhood of Railway Clerks as follows:—

"READING COMPANY
READING DIVISION

Office — Superintendent

Reading, Pa.
August 4, 1951

Mr. John Wonders,
Division Chairman,
Brotherhood of RR & SS Clerks,
Harrisburg, Pa.

Dear Sir:

At Pine Grove on the Lebanon and Tremont Branch, we have following force on duty in the freight house:

Incumbent	Position	Tour	Rate
A. L. Spancake	Clerk	8:30 AM to 5:30 PM	$13.100
L. D. Ziegler	Clerk	8:00 AM to 5:00 PM	13.004
N. J. Mengle	Depot Hand	7:30 AM to 4:30 PM (1 hr. for lunch)	11.984

sufficient work to occupy the full time of the depot hand and the reassignment of the remaining duties did not impose any hardship on the two Clerks' positions, since the work on those positions had decreased to the extent that the depot hand duties could be absorbed therein.

The Carrier maintains that the position of depot hand has been properly abolished, that there does not exist any necessity to reestablish that position, and that the proper procedure was used in abolishing the position, as set forth in the Memorandum of Agreement effective August 19, 1946.

Under the facts and evidence and for the reasons set forth hereinbefore, the Carrier maintains the claim as submitted by the employes is unsupported and unjustified, and respectfully requests that same be denied.

The evidence contained in this submission has been discussed in conference and handled by correspondence with the duly authorized representative of the Clerks' Brotherhood.

(Exhibits not reproduced)

OPINION OF BOARD: On August 4, 1951, the Carrier notified the Employes that the position of Depot Hand at the freight station at Pine Grove, Pennsylvania, was to be abolished due to a decrease in business and that the work of the position would be absorbed by the incumbents of the two Clerk positions at that station. On August 6 the Carrier posted a notice for abolishment of the position effective August 10. On August 8 the Employes wrote the Carrier contending that business had increased and protesting the proposed action. On August 15 a joint check of the Depot Hand position was made, and on August 17 the Carrier addressed a letter to the Employes informing them that the Carrier could "see no further reason for delaying abolishment of position and same is effective with close of business Wednesday, August 15, 1951."

While the Employes contend that the Carrier's action resulted in the violation of numerous rules of the parties' July 1, 1944, agreement, their chief complaint seems to be that the Carrier abolished the position and reassigned the work thereof, some of it allegedly to employes not covered by the agreement, without conference and mutual agreement as contemplated by Rule 13 of said agreement. The Employes take the position that the duties of Group 2 positions cannot "be unilaterally assigned to Group 1 employes without the proper negotiations as outlined in Rule 13, paragraphs (e) and (f)." In connection with the Employes' position the following paragraphs of Rule 13 are pertinent:

> "(b) Positions or work within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except through negotiations."
>
> "(e) When there is a sufficient change in the regular assigned duties and responsibilities of a position or in the character of the service required, the compensation for that position will be subject to adjustment by mutual agreement between the Management and the General Chairman, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."
>
> "(f) When positions are abolished any remaining duties will be re-assigned through conference in conformity with paragraph (e) of this rule."

The Carrier, on the other hand, defends its action on the basis of a Memorandum of Agreement adopted by the parties on August 12, 1946. The

Carrier maintains that "the procedure in the abolishment of positions and the reassignment of remaining duties is **exclusively** provided for in the Memorandum of Agreement of August 12, 1946." (emphasis added) And it declares that the Employes' view "tends to set aside" the Memorandum of Agreement "in favor of other rules of the Clerks' Agreement under their assumption that the Memorandum * * * is supplemental to the main agreement and does not supersede rules of the main agreement with respect to the procedures regulating the abolishment of positions." Further, the Carrier declares that "The provision of the Memorandum of Agreement pertaining to reassignment of remaining duties of an abolished position is a departure from the procedure outlined in **Rule 13 (f), which required reassignment through conference** between the Management and General Chairman." (emphasis added) And finally, the Carrier urges that "by following provisions of Section 3 of the Memorandum of Agreement, it is not necessary to negotiate with respect to the reassignment of any remaining duties of the abolished position under Rule 13 (f)."

The Record clearly establishes that the Carrier did not meet the requirement of Rule 13 (f), which, to use the Carrier's own words in reference to the effect of this provision prior to adoption of the Memorandum, "required reassignment through conference between the Management and General Chairman." The Carrier's most direct claim of compliance with Rule 13 (f), although under its basic position no such compliance is required by virtue of the Memorandum of Agreement, is contained in its letter of October 19, 1951, where it stated that "the reassignment of depot hand duties to two clerks' positions were in effect handled through conference when the affected positions were jointly checked with the Division Chairman * * * " It is extremely difficult to find merit in the contention that the joint check of the Depot Hand position constituted a reassignment of the duties of that position to other positions "through conference", and it is concluded that the Carrier did not fully comply with the requirements of Rule 13. However, if the Carrier's version of the effect of the Memorandum of Agreement is correct, then any failure of the Carrier to observe the requirements of Rule 13 presents no basis for complaint by the Employes.

Thus, the critical question for determination in this case involves the effect of the Memorandum of Agreement upon Rule 13, and more specifically upon Rule 13 (f). Was Rule 13 (f) set aside, cancelled or superseded as is in effect contended by the Carrier?

The intended effect of the Memorandum of Agreement upon Rule 13 cannot be clearly determined from the Memorandum itself. On the one hand, for instance, Paragraph 2 of the Memorandum requires the Carrier, upon request, to "furnish full details regarding the proposed **re-assignment of** the remaining **duties, in accordance with the rules.**" (emphasis added) The words "in accordance with the rules" certainly do not indicate that the parties intended that Rule 13 (f), which deals specifically with reassignment of remaining duties, need not be observed by the Carrier even after the Employes have raised timely objection to a theretofore unilaterally developed abolishment plan. Then too, Paragraph 5 (a) preserves to the Employes the right to submit a claim which "will be considered on its merits **in accordance with the rules"** where the effect of an abolishment plan proves to be different from that (1) explained in advance by the Carrier, or (2) **"as mutually agreed upon** between Management and Organization representatives". (emphasis added) Use of the term "explained in advance" would appear to be directed to instances where the Employes permitted the Carrier to unilaterally put its plan into effect without protest; and in use of the term "as mutually agreed upon" it would appear that the parties had in mind instances where the Employes disagreed with the Carrier's proposed plan and the change was thereafter "mutually agreed upon". Moreover, it should be noted that in Paragraph 5 (a) the Memorandum again speaks of action "in accordance with the rules"; in contrast it is significant that at no place does the Memorandum state that any rule of the July 1, 1944, agreement is to be considered cancelled or superseded.

On the other hand, the provision in Paragraph 4 of the Memorandum stating that after protest by the Employes, "the position will be continued until the joint check is completed and the Organization representative notified of the decision of the Management", can be interpreted to mean that the Carrier's decision is final even if the carrier does not meet the requirements of Rule 13 (f). However, even this provision is not clear. Is the Carrier's decision final? Or are negotiations required if the Employes disagree with the decision? The provision can reasonably be deemed incomplete, at least to the extent that it fails to state precisely what is to happen after the Employes have been notified of the Carrier's decision. A matter of such importance should not be left to dubious implication. Indeed, the elimination of Rule 13 (f) should not be left to dubious implication.

In view of the fact that the Memorandum is not entirely clear as to its effect on Rule 13, it is proper to look elsewhere for assistance in determining the parties' intent. In this connection, it is significant that in issuing copies of the then newly adopted Memorandum of Agreement to Department and Division Heads the Carrier stated that it was "supplemental to the standard rules with the Clerks' Organization". Thus, just after the Memorandum was adopted the Carrier apparently did not consider that it was intended to supersede the standard rules. Moreover, on August 4, 1948, the Carrier issued a letter to its Operating Superintendents which emphatically demonstrates that in the Carrier's own opinion Rule 13, and specifically Rule 13 (f), still must be observed by the Carrier if its unilaterally developed plan meets timely protest by the Employes. In this respect, the following paragraphs of the August 4, 1948, letter are especially significant:

> "When it becomes necessary through reduction of work items or performance to reduce force or abolish positions, a study must be made on the ground by the officer in charge with such assistance as he may request or who may be directed to participate.
>
> "Record must be made of the work items reduced, work items to be eliminated, what **re-assignments of any remaining duties** are necessary to other employes under the scope, rates of pay involved, changes in rates necessary, change of lunch periods, **preparing same for negotiation with the Clerks' Committee in accordance with Rule 13 (f) of their Agreement."** * * * (emphasis added)
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> "While the Memorandum of Agreement only provides that you furnish full details on request, considerable time can be saved by giving the details in your notification as result of your study, and **then handle in accordance with Rules 13 (b), (c) and (f)** and Paragraph 3 of the Memorandum of Agreement with the Clerks' Organization." (emphasis added)

Moreover, the Record discloses a June 28, 1948, admission by the Carrier of a violation by it in abolishing a position at Pottstown, Pennsylvania, and reassigning the remaining duties thereof without the concurrence of the Employes. The position was re-established. While by no means controlling in the instant case, the Pottstown decision lends some support to the view of the Employes here.

All of the above considerations lead to the conclusion that the real purpose and intended effect of the Memorandum of Agreement is to permit the Carrier to initiate the abolishment of any position and to proceed unilaterally without negotiations and right of participation by the Employes until the required notice of the intended abolishment is given to the Employes. Upon receipt of such notice, the Employes are privileged to permit the Carrier to effectuate the abolishment without meeting the requirements of Rule 13, and to unilaterally reassign remaining duties in accordance with Paragraph 3 of the Memorandum, or to require, by timely statement of disagreement, the Carrier thereafter to give due consideration to the requirements of Rule 13 and other rules of the July 1, 1944, agreement in proceeding further with

the matter, in which case the Carrier may not unilaterally reassign remaining duties although the parties may by negotiations reassign such duties along the lines suggested by Paragraph 3 of the Memorandum or as they might otherwise agree.

In view of the above considerations Claim (1) must be sustained. Claim (2) must be sustained to the extent that the Depot Hand position must be restored and Claimant Norman J. Mengle must be compensated for any monetary wage loss sustained by him as a result of the violation; but that part of Claim (2) asking compensation for "all other employes adversely affected", who are not named and whose claims are not developed fully, must be dismissed without prejudice.

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 violated the Agreement.

AWARD

Claim (1) sustained. Claim (2) sustained in part and dismissed in part as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.