Award No. 6348

Docket No. CL-6346

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 when on August 20, 1951, position of Clerk at Perkiomen Junction, Pa. was abolished.

2. That the Carrier be required to restore position and have all clerical duties performed by employes under the scope of the Clerical Agreement.

3. That all employes adversely affected be compensated for all monetary wage loss.

EMPLOYES' STATEMENT OF FACTS: During the early part of 1951, the Reading Company made application to the Pennsylvania Public Utility Commission requesting change in the status of Perkiomen Junction Station from an agency to a non-agency station, which was granted in an order of the Commission under date of July 16, 1951.

Prior to August 21, 1951, the position of Clerk at Perkiomen Junction was filled by incumbent, Mr. T. J. O'Connor, who had for years reported to the Agent at Phoenixville, Pa. Mr. O'Connor held the position at Perkiomen Junction by reason of his point seniority standing. Perkiomen Junction is an interchange point from the main line of the Reading Company to its Perkiomen Branch and serves several points along its right of way between Perkiomen Junction and Allentown, Pa.

Further, Reading Division Superintendent in his letter of August 15, 1951, quoted hereinbefore offered to incorporate the Perkiomen Junction seniority district into that of the district existing at Phoenixville. The Committee did not desire this arrangement. Also, the clerk incumbent at Perkiomen Junction had division seniority rights which he did not choose to exercise.

In their claim, Employes ask (paragraph 2 of Statement of Claim) that the clerk's position at Perkiomen Junction Station be restored. Even if their contention and claim that the position was improperly abolished and work removed from the scope of the Clerks' agreement were tenable, the Carrier questions the right of the Board to order the reestablishment of the clerk's position at Perkiomen Junction Station and conditions prevailing prior to August 20, 1951. The Board has held in a number of awards that it will not direct the reestablishment of positions.

Carrier maintains that the position of clerk at Perkiomen Junction 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.

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

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

OPINION OF BOARD: Claim is here made that the Respondent acted in contravention of Rule 1, paragraphs (b), (e), (f), of Rule 13, and Rules 23, 24, 53, 54 and the Memorandum of Agreement of August 12, 1946, when it allegedly, by unilateral action and without prior negotiation transferred work from one point to another.

There is no dispute on essential facts and circumstances.

Under date of August 6, 1951 Carrier's Superintendent advised the General Chairman that effective August 20, 1951, the status of Perkiomen Junction was being changed from an agency to a non-agency status, which would result in the abolishment of the clerical position thereat and the transfer of the remaining work of the abolished position to Phoenixville. On August 8, 1951 prior to the effective date for abolishment of the position the General Chairman formally protested the action of the Carrier on the ground that same was in violation of the above cited rules and the Memorandum of Agreement.

Respondent Carrier takes the position that the work involved was not the exclusive work of the Clerks within the meaning of the effective Agreement and that the remaining portion of the said work could properly be transferred to one not covered thereby. It was further asserted that the seniority provisions of the Agreement were effective at Perkiomen Junction only so long as the position existed at this point; that negotiation on this action was not required by the Agreement and that the Memorandum of Agreement superseded conflicting provisions of Rule 13.

It is unquestioned that Perkiomen Junction and Phoenixville are in different seniority districts. The work in question, after its transfer to Phoenixville, was performed by one not covered by the Agreement.

It is clear that the crux of this dispute is whether or not the Memorandum of Agreement of August 12, 1946, rendered ineffective Rule 13. Rule 13 (b), (e), (f) and paragraphs 2, 3 and 4 of the Memorandum of Agreement of August 12, 1946 read as follows:

"RULE 13 — CLASSIFICATION AND RATING POSITIONS

" * * *

"(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."

"MEMORANDUM OF AGREEMENT (August 12, 1946)

" * * *

"2. Employing officer or supervising official will notify Local and Division Chairmen, in writing, at least five calendar days in advance of abolishing any position. If requested to do so by Local or Division Chairman, the employing officer or supervising official will furnish full details regarding the proposed re-assignment of the remaining duties, in accordance with the rules. The full notice of five days, as provided in the foregoing, will not be required in instances where there is a temporary cessation of work caused by conditions beyond the control of the Management, and all work in such instances is temporarily abolished or discontinued, but the Division or Local Chairman will be notified promptly in order to avoid any violation of rules in effect.

"3. Any remaining duties of the position abolished will be reassigned to other scope employes at that location or office. In cases where there is no remaining position under the Clerks' Agreement at the office or location where the work of the abolished position is to be performed, the remaining duties of the scope position may be reassigned to the remaining non-scope position or positions at that location or office; providing that less than four hours work per day of the abolished scope position remains to be performed, and that such work is related to the duties of the non-scope position.

"4. If the employing officer or supervising official is notified by the Local or Division Chairman before the effective date of the abolishment of the position of any disagreement concerning the reassignment of the remaining work items, an immediate report will be made to the head of the department and prompt arrangements made for a joint check between a representative of the Management

and the Organization. In such instances, the position will be continued until the joint check is completed and the Organization representative notified of the decision of the Management.

" * * * ."

We are of the opinion that the Memorandum of Agreement (portions of which are quoted above) were intended to effectuate rather than supersede rules of the current Agreement.

Paragraph (b) of Rule 13 distinctly provides that the removal of positions or work from the application of the rules (in this instance the removal of work from one seniority district to another) can come into lawful being (under the Rule) only through negotiation. The action here was unilaterally taken prior to consulting the Organization. Prompt and timely protest of such action was made, yet transfer of the work was completed prior to any evident consideration (on the part of the Respondent) of the protest of the Organization.

Paragraph (f) of Rule 13 in referring to paragraph (e) thereof has reference to conferences between the parties in connection with assignment of any duties remaining to, or of, abolished positions. Again no conferences were held on this subject.

Paragraph 4 of the Memorandum made mandatory a joint check of duties and reassignment of remaining work after a protest. The requirement for making such a check was not conditioned upon a request therefor. The protest in itself was sufficient to require such check. Likewise it was mandatory under paragraph 4 of the Memorandum that this position be continued pending announcement of the final decision of the Management relative to the check. Both the abolishment of the position in question and the reassignment of the remaining duties thereof were premature.

Paragraph 2 of the Memorandum of Agreement is indicative that the parties intended such Memorandum to be ancillary to, rather than superior to, the rules of the effective Agreement. Express reference is made therein of the parties' desire to avoid any violation of the rules and their intention to make reassignment of existing duties of abolished positions subject to the rules.

Thus we conclude, and so find and hold, that the Memorandum of Agreement of August 12, 1946, did not supersede or nullify the applicable rules of the effective Agreement.

As to the proper extent and coverage of the claim before this Tribunal it is noted that while the letter from John Wonders, Jr., Division Chairman, to W. E. Martin, Superintendent, bearing date of August 8, 1951, makes mention of ". . . Clerk O'Connor and or employes affected . . ." a later communication, dated November 9, 1951, makes reference only to the restoration of the position and its last incumbent thereof (O'Connor); so therefore we conclude, and so find and hold, that the claim before us is limited to the position abolished, and reassignment of the duties thereof and the compensation of Clerk O'Connor, and that the claims for "all employes adversely affected" should be and the same are hereby 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

Claims (1) and (2) sustained.

Claim (3) sustained as to Clerk O'Connor and dismissed without prejudice as to all other employes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.