Award No. 7168
Docket No. CL-7193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

BOSTON & ALBANY RAILROAD (N. Y. C. R. R. CO., LESSEE)

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

(1) Carrier violated the rules of the current Clerks' Agreement when on or about October 15, 1953, it issued verbal instructions to the Stewards in charge of diners operating on train 27 out of Boston to discontinue drawing their full stock of supplies for the diners at Boston, and to only draw what emergency supplies were needed, and that in the future they were to stock the diners in Chicago instead of Boston, that

(2) Carrier shall be required to return this work to the scope and application of the Clerks' Agreement on the Boston & Albany Railroad (N. Y. C. R.R. Co., Lessee) from which it was unilaterally transferred, and that

(3) All employes adversely affected shall be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: On or about October 15, 1953, Asst. Supt. J. G. Mackenzie, and/or his assistants, issued verbal instructions to the Stewards in charge of diners operating on train 27 out of Boston (which returns as train 28 from Chicago) to the effect that in the future, they were to fully stock the diners at Chicago instead of Boston, and were only to draw emergency supplies or depleted items from the Commissary at Boston. Prior to this, the diners on train 27 out of Boston were fully stocked and serviced at Boston each day prior to departure, and only emergency supplies or depleted items were drawn at Chicago (Employes' Exhibit "A").

Subsequently, on December 3, 1953, carrier abolished two (2) positions in the Commissary Dept. at Boston, which they contended was due to a reduction in work, method of handling linen and discontinuing of the butchering of meat at Boston, also making regular bar checks. Carrier also permitted Food Control Supervisor W. P. White, whose position as such is excepted from Rules 4, 8, 12 and 14 of the Agreement, to absorb work at the counter in dispensing supplies and also to handle the linens. Mr. White is still performing this work and this fact, together with certain reductions

All the facts and arguments herein presented were made known to the employes through correspondence or during the handling of the case on the property.

(Exhibits not reproduced)

OPINION OF BOARD: The record in this case shows that prior to October 15, 1953, dining-car supplies for Train 27, operating in through service between Boston, Massachusetts, and Chicago, Illinois, were issued and placed aboard primarily at Boston and that emergency and depleted supplies only were drawn and put aboard at Chicago. On October 15, 1953, the Carrier issued instructions to dining-car stewards to increase the amount of supplies currently being drawn from the Chicago Commissary. It is the contention of the Organization that the transfer of work from Boston to Chicago resulting from these instructions is violative of the Clerks' Agreement.

There are certain facts established by the record that must be accepted as true in dealing with the merits of this case. They are: The Boston & Albany Railroad is a part of the New York Central Railroad System. The Clerks have a separate and distinct agreement with the Boston & Albany from those held with other parts of the New York Central. The employes at Boston are, because thereof, under a different agreement with the Carrier than those at Chicago. It cannot be questioned that employes at either Boston or Chicago do not have the exclusive right to draw and load all dining-car supplies for these two trains. Nor can it be disputed that the Carrier, in the absence of restricting provisions in its agreement, may determine the manner and place where the work shall be done as a part of its managerial prerogative. It is also the function of management to determine the number and classification of employes needed to perform the work except as it may have limited itself by contract. In other words, the Carrier had a right to do everything it did do, unless it has contracted to have the work done in some other way. There does not appear to be much dispute on the foregoing propositions.

The evidence does show that there was a transfer of work from Boston to Chicago involving the drawing and loading of dining-car supplies. Two positions were abolished at Boston, but no new ones were established at Chicago. The Carrier contends that the abolished positions at Boston resulted from a change in the method of handling at that point—that there was a reduction of work because of a change in the manner of handling linen, the discontinuing of the butchering of meat, and the discontinuance of regular bar checks. To the extent the work disappeared for these reasons, there is no violation of the Agreement provisions. The disappearance of work for economic reasons is not a removal of work from the Agreement as we here use those terms.

The Organization asserts, however, that any loss of work resulting from its transfer from Boston to Chicago is violative of that part of Rule 1 (a), current Agreement, providing:

> "Positions or work within the scope of this agreement belong to the employes covered thereby and shall not be removed therefrom without negotiation and agreement between the parties signatory thereto."

Under this portion of Rule 1, work may not be transferred from under the Agreement to employes under another agreement except by negotiation. The words of the rule are plain and the intent is clear. In the confronting case no positions were transferred but that there was a transfer of work cannot be doubted. The Agreement was made by the Carrier and the Organization and, its meaning being clear, it is the function of this Board to enforce it as made.

It is not the function of this Board to order the Carrier to restore the work to any particular position. That is the prerogative of the Carrier. We

can only find that there was a violation and direct the payment of penalties as long as the violation continues.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.