Award No. 7819
Docket No. CL-7472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:

(1) That the Carrier violated the Clerks' Agreement, effective February 1, 1952, when it abolished the position of Engine Crew Caller at Pocatello, Idaho, rate of pay $262.17 per month, held by Melvin Adamson, effective at the close of work March 23rd, 1954, and assigned the work to employes coming within the Scope of the Clerks' Agreement but in separate seniority classes,

(2) That the Carrier shall be required to reimburse Melvin Adamson for wage loss sustained from March 23rd, 1954, until July 15th, 1954, on which date the position was re-established, and Adamson returned to service on basis of seniority.

EMPLOYES' STATEMENT OF FACTS: Effective at the close of shift on March 23rd, 1954, the Carrier abolished position of Engine Crew Caller and transferred the duties and work thereof for its performance to Chief Engine Crew Dispatcher, F. J. French and Engine Crew Dispatcher, F. G. Filer, both of these employes coming within the Scope of the Clerks' Agreement, but in separate seniority classes.

Vice General Chairman Wade, under date of March 30, 1954 registered protest, and filed claim for wage loss suffered by Adamson, with the Master Mechanic.

The Master Mechanic declined the claim under date of April 13, 1954, and the General Chairman, under date of April 22, 1954, appealed the decision of Master Mechanic to the General Superintendent MP&M, copy of General Chairman's appeal attached as Exhibit "A".

Under date of June 15, 1954, the General Superintendent MP&M replied to the General Chairman's appeal, copy of which is attached as Exhibit "B".

On June 21, 1954, the General Chairman appealed to the Assistant Vice President, who is the highest officer to whom appeal may be made, and

employe in an agreement made following the inception of the 40-hour week (September 1, 1949) where provision was made that a full-time Class 2 employe could relieve a full-time Class 1 employe on assigned relief days. That understanding does not have any bearing on the right of the Carrier to have Class 1 employes perform work which is included within Rule 1(b). Nothing in the agreement prohibits the assignment of Class 2 work to a Class 1 employe.

The Carrier has not violated any provision of the agreement and the claim should be denied.

It is hereby affirmed that all information and data used in this Submission Responding to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in dispute here arose out of the abolishment of the position of Crew Caller, a Class 2 position, at Pocatello, Idaho, occupied by the Claimant, Melvin Adamson, between March 23, 1954 and July 15, 1954, and the assignment of the work thereof to the Engine Crew Dispatcher and the Chief Engine Crew Dispatcher; each of the last two named positions being Class 1 positions. Reparations are sought for all wage loss suffered by the claimant.

Petitioners here contend that the abolishment of the position of Crew Caller, a Class 2 position, and the reassignment of such duties to the Engine Crew Dispatcher and the Chief Engine Crew Dispatcher, each a Class 1 position, was violative of Rules 1, 2, 3, and 18 (b) of the effective agreement. It was pointed out that Class 1, and Class 2 positions are maintained on separate Seniority Rosters, 34-1 and 34-2; that when the position of Crew Caller was bulletined the filling thereof was limited to those having seniority on the 34-2 Roster, and further that positions were created to work in both classes only upon the execution of Special Agreements, thus indicating the clear intent of the parties to limit Class 1 and Class 2 work or positions to those employes having seniority as indicated on Rosters identified as 34-1 and 34-2.

The Respondent counters with the assertion that Rule 1, the Scope Rule has the effect of listing the classes of employes covered thereby and defines such classes only. It was pointed out that Class 1 employes are those who perform 4 or more hours of clerical work, while at the same time classifying and defining class 2 and 3 employes and work as that and those not requiring the higher skills or ability of Class 1 employes. It was contended that Rule 1 does not have the effect of limiting the performance of all clerical work to Class 1 positions or the performance of all non-clerical work to Class 2 or 3 positions.

Prior decisions of this Board clearly indicate that work may not be removed from the confines of one seniority district and assigned to those of another seniority district, even though both groups are covered by the same collective agreement. Awards 973, 975, 1306, 1808.

However, we are here confronted by another question, that is, may the duties of a Class 2 position when abolished, be assigned to and performed by occupants of Class 1, positions, or phrased in another manner, is the performance of Class 2 work (non-clerical in nature) restricted to Class 2 employes or may it be performed by Class 1 employes in instances where both classes while on separate Seniority Rosters are in the same Seniority District?

In Award 7167 we stated that under ordinary circumstances employes on one Seniority Roster may not be used to perform the work of positions whose occupants are on a different Seniority Roster.

The parties hereto have by past practice agreed that, absent a Special Agreement, duties performed by both Class 1 and Class 2 employes could not be incorporated into one position. Such was accomplished only after Memorandum of Agreements bearing dates of November 15, 1949 and August 11, 1954. What we stated in Award 2585 is particularly applicable here.

> "* * * Under the agreement the seniority rights of employes on the respective rosters are no different than they would be if the stations were in different seniority districts. In other words, the employes on the respective rosters have the prior right to claim and perform work falling within the scope or purpose for which the roster is set up. By the same token, the carrier is precluded from assigning employes on one roster to perform work falling within the scope of another roster—the well established rule as applied to employes in different seniority districts being applicable. * * *"

For the reasons stated this claim is meritorious.

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 effective agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 22nd day of April, 1957.

DISSENT TO AWARD NO. 7819, DOCKET NO. CL-7472

This Award is in serious error. The majority herein either failed to comprehend or to consider the clear and unambiguous provisions of the controlling agreement and as a result the Award is patently unsound and incorrect, and cannot be considered as a valid precedent.

This dispute involves the simple question of whether or not some Class 2 work may be performed by a Class 1 employe. While the Organization vaguely asserted that under the agreement Class 2 work is restricted in its performance to Class 2 employes, it was unable to show any agreement provision having that restrictive effect. By its award herein, the majority herein likewise demonstrate their inability to find any agreement basis to support the sustaining award. As a matter of fact, the agreement provision which controlled this dispute as well as applicable precedent Awards required a denial award.

The Scope Rule, Rule 1(a) of which defines which employes covered by the agreement shall be "clerks" (i.e., Class 1 employes) is controlling over this dispute. It provides that 'Employes who regularly devote **not less than four hours per day**" to the performance of clerical functions described therein

shall be clerks or Class 1 employes. With no ambiguity, this provision contemplates that Class 1 employes may perform other than Class 1 work for less than four hours per day, which of necessity would be work comprehended by the scope rule, viz., Class 2 work, as set forth in Rules 1(b) and (c).

The majority have refused to consider or discuss the effect of this provision.

Not only have they ignored the agreement provisions which plainly required a denial award, but they also have ignored and failed even to discuss prior awards of this Division which were squarely applicable and which supported the Carrier's position in this docket.

In **Award 6140,** we held, with regard to a rule substantially similar to Rule 1(a) here, that neither that rule nor any other rule—

> "* * * prohibits the performance of manual labor by Group 1 employes nor specifically reserves the performance of all manual labor to Group 3 employes."

Previously, in **Award 2011,** this Division was faced with the identical principle here involved. There, claim was made because Group 1 employes performed Group 3 work and, in discussing the scope rule, similar to that here involved, we said:

> "* * * It follows therefore that clerical work is not set off as work to which group (1) employes have the exclusive right. Then what work belongs exclusively to group (1) employes? **There is nothing in the Agreement allocating any particular work to group (1). It does not give all clerical work to group (1) and it does not purport to give all non-clerical work to groups (2) and (3).** It merely classifies positions on the basis of preponderating work. Group (1) employes are those who do mostly clerical work. There is no provision that they shall not do other work. Groups (2) and (3) are merely other employes whose work is not principally clerical —there is no provision that they shall not do clerical work. * * *" (Emphasis ours.)

and:

> "* * * The Agreement falls far short of providing that those who are required to do clerical work for more than four hours per day shall not be permitted to do any other work for the remainder of their eight hour six day weekly assignment. * * *"

Omission of any mention of these Awards in the opinion compels the unhappy conclusion that their pertinence and applicability required that they be ignored rather than discussed.

The majority cite recent **Award 7167** as authority for the proposition that employes on one seniority roster may not be used to perform the work of positions whose occupants are on a different seniority roster. It is appalling to note that while the majority cite **Award 7167** for one sentence in that award, which was purely dictum, it ignores the fact that in **Award 7167** we considered an identical agreement provision as here and in the sentence immediately following the one relied on by the majority we held that **there was no violation of that agreement to have Group 1 employes on one seniority roster perform Group 2 work normally performed by Group 2 employes on another seniority roster,** and deny the claim.

The most serious error, however, in the majority opinion is a factual one. They state:

> "The parties hereto have by past practice agreed that, absent a Special Agreement, duties performed by both Class 1 and Class 2 employes could not be incorporated into one position. * * *"

By this statement, they have completely distorted the factual record before them concerning certain agreements between the Carrier and the Organization which provided for relief positions to relieve on both Class 1 and Class 2 positions. The majority clearly misstate the nature of such agreements. These agreements were not, as they indicate, agreements covering "positions * * * created to work in both classes"; nor were these agreements made so that "duties performed by both Class 1 and 2 employes could be incorporated into one position". These were relief assignment agreements and covered situations where an employe with seniority in one class worked in relief on a position in another class in which he held no seniorty. These agreements were made to avoid possible controversy arising in a situation where an employe on a relief assignment, set up to protect both Class 1 and Class 2 positions, might relieve on a position of a class in which he held no seniority. They had nothing to do with the **scope of duties** which might be included within a position of either class. They did not provide for the incorporation of Class 1 and 2 duties. All of this was outlined clearly in the record before the Board and was not denied by the Organization. Such finding of fact by the majority is in serious error.

Further error was committed by the majority in finding that **Award 2585** was applicable to this dispute. This Award, on its face, is so clearly distinguishable from the situation here presented that it was never cited in the Record nor raised by the parties to this dispute. There, Carrier's baggage room employes assigned to and working at its freight station were used at the Carrier's passenger station, located a block away. Baggage room employes were also assigned to and working at the passenger station. The baggage room employes at both stations were carried on different seniority rosters. The agreement in **Award 2585**, unlike the one here, provided that the rights of employes on the respective **seniority rosters** were the same as if on different **seniority districts**. The Board made a specific finding to this effect which furnished the basis for the sustaining award. There was thus, a transfer of **employes** from one seniority roster to another seniority roster under an agreement which treated **seniority rosters** as **seniority districts**. **Award 2585** did not involve the scope of duties or class of work which might properly be assigned to a position. Here the dispute involves the right of a superior class employe to perform a portion of the duties of a lower rated employe on the same **seniority district** at the **same** location.

For the foregoing reasons, we dissent.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. F. Mullen