

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

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, except as amended, particularly Rule 3-C-2 and the Scope, when it abolished Clerical Position Symbol F-2378, located at Allen Lane Passenger Station, Philadelphia, Pa., Philadelphia Terminal Division, effective August 21, 1951, and assigned the remaining work of the abolished position to an agent and an operator-clerk not covered by the Clerical Rules Agreement.

(b) Delores Roach, Clerk, and all other clerical employees affected, be compensated for all monetary loss suffered as a result of this abolishment on August 21, 1951, and all subsequent dates until violation is corrected. (Docket E-863.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative 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, except as amended, 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 considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, Delores Roach, obtained Clerical Position F-2378, located at the Passenger Station, Allen Lane, Philadelphia, Pa., as the result of bulletin and award when the position was re-established effective August 20, 1951. Miss Roach has a seniority date on the seniority roster for the Philadelphia Terminal Division in Group 1.

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

All data contained herein have been presented to the employee involved or to her duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that until March 28, 1946, the personnel at Allen Lane Passenger Station consisted of an Agent and an Operator-Clerk under the Telegraphers' Agreement; their duties covered the work of the station, including the sale of tickets and the preparation by the Agent of ticket sales reports. There was also an Agent with similar duties at Queen Lane Station on the same branch line.

On account of an increase in passenger ticket sales at both locations during the last three months of 1945 and the first three months of 1946, clerical position F-2378 was established at Allen Lane effective March 28, 1946, to assist in the work.

The clerical position was abolished effective July 16, 1947, because of a decrease in ticket sales. A claim was accordingly filed and progressed upon the property; it was developed that $1\frac{1}{2}$ hours of the Clerk's work was absorbed by the Agent and 2 hours by the Operator-Clerk at Allen Lane, and in addition $2\frac{1}{4}$ hours by the Agent at Queen Lane, totalling $5\frac{3}{4}$ hours.

Consequently, the Carrier settled the claim in 1951 by re-establishing the clerical position and compensating all employees adversely affected by its abolishment. Accordingly the position was again bulletined, effective as of August 20, 1951.

However, since the volume of work was considered insufficient to warrant its retention, the Carrier on the same day informed Claimant of its abolishment, effective August 21, 1951. The present claim resulted.

The Carrier's action in thus settling the prior claim without giving advance notice of its intention to abolish the position again is criticized as showing bad faith. The accusation would be justified if the Carrier had thus induced the Organization to accept less than a full settlement of the prior claim; but, as stated above, the latter was settled in full, including compensation, not only to the Claimant, but also to all others adversely affected. Since the claim was thus settled in full, no unfair advantage was taken in the settlement. Furthermore, the admission that the abolishment of the position in 1947 was erroneous, does not preclude a second abolishment if warranted by conditions existing in 1951. Consequently the question before the Board is whether the new abolishment violated the Agreement.

The contention is that the Carrier violated Rule 3-C-2 (a) which provides that

"When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed" can be assigned to an "Agent, Yard Master, Foreman, or other supervisory employe" only if "less than 4 hours' work per day of the abolished position or positions remains to be performed".

(Emphasis added.)

Claimant argues that after the 1951 abolishment the agent and Operator-Clerk together spent more than four hours in selling tickets, and that since the selling of tickets was work previously assigned to Claimant, the abolishment was therefore unauthorized.

The Organization says: "it is our position that the performance of the duties requires four hours and fifty-seven minutes of the Agent's time from 6:50 A. M. to 11:47 A. M., in addition to one hour and eighteen minutes of the Operator-Clerk's time".

The argument is that on January 28, 1954, in selling 64 tickets the Agent worked four hours and fifty-seven minutes, since he sold the first at 6:50 and the last at 11:40 A. M.; that the Operator-Clerk worked an hour and eighteen minutes in selling four tickets, since he sold the first at 12:12 and the last at 1:30 P. M.; and that Rule 3-C-2 (a) was therefore violated.

The contention is erroneous in two respects. First, Rule 3-C-2 (a) refers to work, not the elapsed time during which it was done. The Carrier contends that the average ticket sale consumed only about thirty seconds. The Organization contends that it took much longer. But clearly it did not take an average of $4\frac{2}{3}$ minutes for the Agent and 19 minutes for the Operator-Clerk to sell the average ticket. The record shows that they were not working continuously on ticket sales; in other words that ticket sales did not take six and one-fourth hours.

It cannot seriously be contended that perhaps two hours of actual sales work performed between 6:50 and 11:47 constitute four hours and fifty-seven minutes of sales work within the intent of the rule; for it ignores the meaning of the word "work" and makes the provision meaningless.

But even a showing that the sales actually took $6\frac{1}{4}$ hours would not prove a violation of Rule 3-C-2 (a). For it refers to the work of the abolished position which remains to be done. If all the ticket selling had been the work of Claimant's position, a remaining $6\frac{1}{4}$ hours of such work would be the work of that position. But not all the ticket selling belonged to her position; it was clearly established, not to supersede the Agent and Operator-Clerk in ticket selling, but to assist them. Consequently not all, but a relatively small part of the ticket selling was the work of her position—how much was not proved, nor how much of it remained after the decrease in ticket sales which resulted in the abolishment of the position. Nor was it shown how much of Claimant's other work remained to be done.

The contention that more than four hours of ticket sales by the Agent and Operator-Clerk who are primarily responsible for them, prevents the abolishment of Claimant's position, makes the rule ridiculous. The position could be established to help overworked ticket sellers, but could not be abolished so long as the combined ticket-selling work at the station exceeded four hours. Presumably that is why the rule refers to work of the position, not to all work of the kinds shared by that position with others. At any rate, we cannot excise the words "of the position" from the rule. The violation complained of has not been established.

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 no violation of the Agreement was shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of January, 1958.