

Award No. 10102

Docket No. CL-9768

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES**

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 the Scope and Rule 3-C-2, when it abolished Clerical Position Symbol G-58, located at Wheatland, Pa., Yard Office, former Lake Division, effective March 3, 1954, and assigned a substantial amount of the remaining duties of the position to Yard Masters not covered by the Clerks' Rules Agreement.

(b) The Claimants, W. H. Curtain, who was the incumbent of the abolished position, and Extra Clerks C. McCullough and A. E. Brooks, as well as all other affected employees, should be restored to their former status and allowed eight hours' pay a day as a penalty commencing sixty days retroactive to June 28, 1955, and continuing until the violation is corrected. All affected employees should also be reimbursed for all expenses incurred as provided in Rule 4-G-1 (b). (Docket 14)

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 Claimants in this case hold positions 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.

Prior to March 3, 1954, there were three clerical positions located at Wheatland, Pa., Yard Office, former Lake Division. The former Lake Division is now a part of the Lake Region.

not allowed the employe will be notified to this effect in writing. This rule clearly contemplates and requires the filing of claims for a named employe or employes. The filing of a claim with this Board for "all other affected employes" is so vague and indefinite that it fails to give proper notice to the Carrier of the individuals involved in the claim and thus prevents proper consideration of the claim, which is in violation of Rule 7-B-1, above, and the applicable provisions of the Railway Labor Act, as amended. For this reason, the Carrier contends that that part of the present claim which relates to "all other affected employes" must be denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that none of the duties of the abolished Clerical Position, G-58, have been assigned to or performed by Yard Masters at Wheatland Yard Office, that the Carrier has not violated any provisions of the applicable Agreement and that therefore, the Claimants are not entitled to the compensation which they claim.

It is, therefore, respectfully submitted that the claim here before your Honorable Board is not supported by the facts or by the Clerks' Agreement and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 28, 1955 the Organization's Local Chairman filed a claim in protest against a Carrier action which became effective on March 3, 1954. The claim was progressed on its merits through the usual steps on the property and ultimately was appealed to this Board. Only the

merits of the claim were argued before the Board by the parties, both in their ex-parte submissions and in the subsequent hearings held before us—first without and then with the Referee participating. During subsequent consideration of the case in executive session a Carrier member raised for the first time the contention that the claim was not filed on the property in compliance with the timeliness requirement of Agreement Rule 7-B-1 (a). He argued that the claim is not properly before us for adjudication, by virtue of the cut-off provision in subparagraph (b) of Rule 7-B-1.

At the Division Superintendent's level in the progression of the claim, the Superintendent contended that the elapsed time between the date the position was abolished and the filing of the claim was "an unreasonable time in which to take such action." In support of this contention he cited our Awards 6228 and 6229. These awards were not based on Rule 7-B-1(a) and (b) or on similar contract language, however. At none of the appeal steps above the Division Superintendent's level did the Carrier raise a defense of either untimeliness per Rule 7-B-1(a) and (b) or of under delay in general, so far as the record discloses. Under this set of facts, we must conclude that the Carrier waived reliance on the procedural point now urged in its behalf. We hold that the claim must be entertained on its merits. In passing, we note that the claim requests compensation retroactive to 60 days prior to the date of filing, rather than retroactive to the date of the Carrier's disputed action.

Effective March 3, 1954 the Carrier abolished the third trick Group 1 clerical position (designated G-58) at its Wheatland, Pa., Yard Office and changed the tours of duty of the first and second trick Group 1 clerical positions remaining there so that one clerk was assigned from 6:00 A. M. to 2:00 P. M. and the other clerk from 6:00 P. M. to 2:00 A. M. Both prior to and following the date of this action, Yard Switching Crews and one Yardmaster were on duty on each of the three tricks at this location. The result was that subsequent to the abolishment of the third trick clerical position there was no clerk coverage from 2:00 P. M. to 6:00 P. M. and from 2:00 A. M. to 6:00 A. M. at the Wheatland Yard Office, although a Yardmaster and Yard Switching Crews continued to be on duty at all times.

Since two clerical positions remained in existence at the subject location after March 3, 1954 the confronting question is whether the Carrier assigned to Yardmasters any of the remaining work of abolished position G-58, in violation of Rule 3-C-2(a). The Organization contends that beginning on the involved date the Carrier assigned to Yardmasters a substantial part of the remaining work of the abolished clerical position, rather than assigning all of such work to the remaining clerical positions. The Carrier replies that none of the duties previously assigned to clerical position G-58 was assigned to or performed by the Yardmasters at this location after the abolishment of that position, that all of the duties of said position were absorbed by the two remaining clerks, and that the assigned hours of these clerks were rearranged so as to avoid transferring any work from the former position to Yardmasters. Management states the third trick clerical position was eliminated "because of the continuing decline in traffic which seriously affected the Carrier's revenues." (R, 28)

Much of the evidence offered by the Organization tends to show that since March 3, 1954 Yardmasters have been performing clerical work. Standing alone, such evidence does not establish that work was transferred from clerks to Yardmasters. The latter have traditionally done some work of a clerical nature as part of their regular duties and without infringement on the Clerks' Agreement. Violation of Rule 3-C-2(a) can be indicated only by a showing that since March 3, 1954 Yardmasters have been handling clerical work which they did

not do before but which had been performed by Group 1 clerks at the Wheatland Yard Office.

When our consideration of the record is confined to this central aspect of the case, we find that such evidence as is offered is in sharp conflict. In this state of affairs we think the case should be remanded to the property for further (and, if possible, joint) development of the pertinent facts. If the parties are unable to settle this case on the basis of the additional facts developed, the case should be returned to the Board for decision on the merits.

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 the case is remanded to the property.

AWARD

Case remanded as stated in the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.