Award No. 10314

Docket No. CL-9901

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

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

(a) Carrier violated the current Agreement effective January 15, 1955, and supplements thereto, between the parties, when on July 30, 1956, it abolished the position of 2nd Trick Yard Clerk, hours 3:45 P.M. to 11:45 P.M., occupied by D. D. Miller at Chevrolet Yard, Flint, Michigan and assigned duties thereof to the Yardmaster on duty, an employee not covered by the Clerks' Agreement, and,

(b) That Claimant, Yard Clerk Don Borst, shall now be paid a day's pay at the rate of time and one-half of Yard Clerk's position for not being called out to perform the work remaining from the abolished position on August 9, 13, 14, 15, 16, 21, 22, 23, 27, 28, 29, 1956.

EMPLOYES' STATEMENT OF FACTS: Prior to the abolishment of the position in question, the following schedule positions were in existence at the Carrier's Chevrolet Yard, Flint, Michigan:

(1) 1st Trick Yard Clerk — Fred Turner — 7 A.M. - 3 P.M., Workweek Monday through Friday — restdays, Saturday and Sunday.

(2) 2nd Trick Yard Clerk—D. D. Miller—3:45 P.M. - 11:45 P.M., Workweek Monday through Friday — restdays Saturday and Sunday.

(3) 3rd Trick Yard Clerk—Don Borst—11:00 P.M. - 7 A.M., Workweek Sunday through Thursday — restdays Friday and Saturday.

On July 30, 1956, the position of 2nd Trick Yard Clerk was abolished and the following duties and work were assigned to the Yardmaster on duty:

(1) Marking up Switch Lists.

(2) Answering telephones (two telephones in Yard Office).

(3) Checking and telephoning record of outbound cars to Belsay Yard Office, Flint, Michigan.

(4) Marking up late check of cars in Yard.

find no justification for allowing claimant more than three hours minimum provided by Rule 4-A-6 for regularly assigned employes notified or called to perform work between their regular work periods."

Assuming for the moment for the sake of argument without admitting, that clerks were entitled to perform it, such total time worked would not equal more than two hours and claimant would not be entitled to payment of more than a call for each day of the claim and certainly is not entitled to eight hours at the rate of time and one-half for time not worked.

Carrier reiterates that the work here under discussion was incidental to the duties of the yardmaster and could rightfully be assigned to him without violating the Clerks' Agreement and claim should be declined in its entirety and asks that this Board so find and award.

All data contained herein has in substance been presented to the employees and is a part of the matter in dispute.

OPINION OF BOARD: This is a scope rule case. The Organization has charged that the Carrier improperly assigned work which, under the Agreement, was reserved exclusively to the members of the Organization.

The Carrier, on the other hand, contended on the property that there was less than four hours work involved and therefore they were not in violation of the Agreement.

The applicable provisions of the Agreement are Rule 1 and 15(e). Rule 1 is the general scope rule while Rule 15(e) establishes the procedure which shall be followed in the event a position is abolished.

Rule 15(e) provides:

"When a position covered by this agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or positions covered by this agreement when such position or other positions remain in existence, at the location where the work of the abolished positions is to be performed.

(2) In the event no position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed

by an Agent, Yardmaster, Foreman, or other Supervisory employee, provided that less than four (4) hours of work per day of the abolished position or positions remains to be performed; and further provided that such work is incidental to the duties of an Agent, Yardmaster, Foreman, or other supervisory employee."

The facts show that the Carrier, prior to the alleged violation, had 3 clerks assigned to the Chevrolet Yard in Flint, Michigan, one clerk per shift. On July 29, 1956 the Carrier abolished the position of the second trick yard clerk on the ground of slackening of business. The third trick yard clerk,

whose position was not abolished, filed the claims which have been processed by the Organization to this Division.

The Carrier denied the claims on the ground that the work performed was less than four hours and therefore paragraph (2) of Rule 15(e) was applicable.

Rule 15(e)(1) is clear and unambiguous. It provides that where a position has been abolished, the work previously assigned shall be assigned "to another position . . . or other positions covered by this agreement when such position or other positions remain in existence, at the location where the work of the abolished position is to be performed." The Carrier is in effect asking for a modification of its own Agreement. There is no question from the record that there still existed 2 other clerk positions at the location. In order to sustain the position of the Carrier, it would be necessary to expand 15(e)(1) to read "no position at the location **at the time**" which would be a modification of the Agreement which this Board has no power to do.

In light of the fact that Carrier relied on 15(e)(2) and ignored the clear mandate of 15(e)(1) the question remains as to whether the alleged damages claimed can be sustained.

The record shows that it was the third trick clerk who filed the claim and his position had not been abolished. On the basis of the record before this Board and the claims filed by the third trick clerk, it is our judgment that while the Agreement was violated that the claim should have been based on the Call Rule as there is no showing that more than 2 hours work per shift was performed by the Yardmaster. This being so, the Claimant is entitled to be paid for a call on the days set forth in the claim.

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 as modified in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.