

Award No. 11107

Docket No. CL-10098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, 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 the Scope Rule, Rule 3-C-2, Rule 4-A-1 (i), and Rule 5-E-1 (e), when it abolished Clerical Position Symbol E-61, located at the Canton, Ohio, Enginehouse, effective July 7, 1956, and assigned the clerical work that had been performed by the incumbent of the abolished position on Saturdays and Sundays to Enginehouse Foremen and others not covered by the Clerks' Rules Agreement.

(b) Clerk R. A. Anderson, the Claimant and former incumbent of Position E-61, should be allowed eight hours' pay a day, as a penalty, for Saturday and Sunday, July 7 and 8, 1956, and all subsequent Saturdays and Sundays until the violation is corrected. [Docket 132]

EMPLOYES' 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.

CONCLUSION

The Carrier has shown that the work of abolished position E-61 which remained to be performed was properly assigned to clerical positions remaining in existence at the location in accordance with the provisions of Rule 3-C-2, and that the Employees have failed to produce any valid evidence to the contrary.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, 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.

(Exhibits not reproduced.)

OPINION OF BOARD: There is in this case a joint statement of agreed upon facts. It reads as follows:

"Claimant R. A. Anderson held position of Clerk, Symbol No. E-61, first trick, Canton Enginehouse, with Thursday and Friday rest days. This position was abolished effective with close of tour of duty on Friday, July 6, 1956, and claimant exercised seniority in the office of Assistant Trainmaster at Canton.

"Another position, Symbol No. E-35, first trick, Canton Enginehouse, with Saturday and Sunday rest days, was held by Clerk H. Bretschneider, and on Saturday and Sunday, claimant also performed certain items of work which were performed by the incumbent of position E-35, Monday through Friday.

"On Saturday, Sunday and holidays, Gang Foreman, first trick, Canton Enginehouse, uses telephone in conducting necessary business pertaining to the operation of the enginehouse, prepares detention sheet whenever engine failures occur, and also assembles information with regard to personal injuries sustained by employees on his trick.

"Claim is presented account clerical employees are not used on first trick at Canton Enginehouse on Saturday and Sunday.

"Claim has been presented and progressed in accordance with the applicable rules of the Agreement."

The question to be decided is whether or not the Carrier violated the Rules Agreement and particularly the Scope Rule 3-C-2, Rule 4-A-1 (i), and Rule 5-E-1 (e) when it abolished the clerical position, Symbol E-61, effective July 7, 1956, and assigned the clerical duties that had been performed on Saturdays and Sundays by the incumbent of the position to Enginehouse Gang Foreman and other M of E employees not covered by the Clerks' Rule Agreement.

The Carrier argues that (a) The facts submitted do not disclose a violation of the contract; (b) the petitioner has failed to sustain the

burden of proof; and (c) that the claim in behalf of the named claimant is improper under our awards.

The rule in question reads as follows:

"3-C-2. (a) 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 other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position 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, Yard Master, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe.

"(3) Work incident to and directly attached to the primary duties of another class or craft such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.

"(4) Performance of work by employes other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this rule (3-C-2) will not constitute a violation of any provision of this Agreement."

It will be noted from the exception contained in this Scope Rule that the contracting parties agreed that clerical work of an abolished clerical position may under certain circumstances be assigned to and performed by employes not covered by the Agreement.

The Carrier states that on Saturday and Sunday there was no clerical position remaining at the location. The Claimant however, strongly maintains that on Saturday and Sunday there was a clerical position at the location—that is, E-35, but that since Saturday and Sunday were rest days for position E-35 the work on those days should have been assigned to an employe covered by the Agreement.

Where no position under the Agreement exists at the location, sub-paragraph (2) of Rule 3-C-2 allows the Carrier to assign work of the abolished position to an Agent, Yard Master, Foreman or other supervisory employe, provided that less than 4 hours' work per day of the **abolished position** remains to be performed and further, that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe. Sub-paragraph (3) of Rule 3-C-2 further broadens

and expands the type of work which may be performed by employees of another craft or class without violation of the Agreement.

If no position exists at the location where the work of the abolished position (E-61) is to be performed, then the Claimants have not established by the evidence in the record that more than four hours' work per day of the abolished position has been performed by employees not covered by the Agreement.

On the other hand, if we hold that another position remains in existence at the location where the work of the abolished position is to be performed then the applicable part of Rule 3-C-2 reads as follows:

"3-C-2. (a) 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 other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed."

Award 8221, relied on strongly by the Carrier, does not control here because the facts therein apply to the situation where "no position under this Agreement exists at the location."

We hold that under the facts in this case position E-35 remained in existence after position E-61 was abolished. The fact that the time involved here is Saturday and Sunday, the rest days for this position, does not mean that on Saturday and Sunday E-35 was not in existence at that location.

The specific nature of the work involved here is set forth in the record. The Enginehouse Foreman wrote the Division Chairman, requesting specific information as to the clerical duties the Foremen were performing. The Chairman listed those duties as follows:

"Transmitting by telephone the diesel power situation with power desk at Cleveland, Philadelphia, local yard masters, preparation of detention reports, placing and receiving and carrying on the general telephone service pertaining to the operation of the enginehouse, including the calling by telephone of employees for emergency work."

We find that the work involved here which was performed by the Gang Foreman does not exclusively accrue to the clerks and is incidental to the Gang Foreman's assigned duties and that the remaining duties of the abolished positions were properly assigned to another clerical position in existence at the location, pursuant to Rule 3-C-2(a)(1). See **Award 7784** (Lynch, **Award 7954** (Cluster) and many others.

In **Award 6325** (Elkouri) we were asked to resolve a dispute involving the abolishment of a clerical position and the alleged transfer of work (mainly telephone work) to the office of the General Foreman. The abolishment of the clerical position was caused by a strike in the coal and

steel industries and a resultant fall-off in business. In denying this claim, we held:

"The record clearly establishes that the only part of the work of the abolished position that was performed by any Foreman, was 45 minutes per night performed by the Night General Foreman. The record further establishes that the particular type of work so performed, involving use of the telephone in the General Foreman's office, does not belong exclusively to employees under the Clerks' Agreement, but is incidental to the Foreman's position and was performed by the Foreman prior to the abolishment of the clerk position. The employees have failed to prove that any Foreman performed any work belonging exclusively to employees under the Clerks' Agreement. This recognized, the claim must be denied. See Award 3494."

Rule 4-A-1(i) reads as follows:

"(i) (Effective September 1, 1949) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Claimant exercised seniority in the office of the Assistant Train Master at Canton after his position was abolished. He was neither an extra, unassigned or the regular employee within the meaning of Rule 4-A-1. The regular employee was H. W. Bretschneider, the incumbent of the regular clerical position E-35. This Board finds that this claim is not brought in the name of the proper Claimant.

The Agreement has not been violated and for this and the other reasons set forth in the opinion the claim is denied.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1963.