Award No. 12107
Docket No. CL-11758

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, 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:

CASE NO. BRC 259

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2 (a), when it improperly abolished two positions of Telephone Switchboard Operator at Cresson, Pennsylvania, Pittsburgh Region, effective July 5, 1956.

(b) Claimant Violet V. Chaney, the incumbent of position Symbol No. HH-9, should be allowed eight hours pay a day for July 5, 6, 9, 10, 11, 12, 13, 16, 17 and 18, 1956.

(c) Claimant Rose A. McGuire, the incumbent of position Symbol No. HH-5, should be allowed eight hours pay a day for July 10, 11, 12, 13, 16, 17 and 18, 1956. (Docket 303)

CASES NOS. BRC 703 and 710

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it improperly abolished two positions of Telephone Switchboard Operator at Cresson, Pennsylvania, Pittsburgh Region, effective October 16, 1957.

(b) The two positions should be restored in order to terminate these claims and that Mary E. Burgoon, the incumbent of position Symbol No. HH-9, and Rose Ann McGuire, the incumbent of position Symbol No. HH-5, located in the office of the Assistant Train Master at Cresson, Pa., and all other employes affected by the abolishment of these two positions should be restored to their former status (including vacations) and be compensated for any monetary loss sustained under 4-A-1 and Rule 4-C-1; be compensated in accordance with Rule 4-A-2 (a) and (b) for work performed on Holidays, or for

Holiday pay lost, or on the rest days of their former positions; be compensated in accordance with Rule 4-A-3 if their working days were reduced below the guarantee provided in this rule; be compensated in accordance with Rule 4-A-6 for all work performed in between the tour of duty of their former position; be reimbursed for all expenses sustained in accordance with Rule 4-G-1 (b); that the total monetary loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287). (Docket 303).

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held 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 Employes 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.

CASE NO. BRC-259

Prior to July 5, 1956, Claimant Violet V. Chaney was the incumbent of a regular position of Telephone Switchboard Operator, at Cresson, Pa., Pittsburgh Region, Symbol HH-9, tour of duty 2:00 P. M. to 10:00 P. M., rest days Saturday and Sunday.

Prior to July 5, 1956, Claimant Rose A. McGuire was also the incumbent of a regular position of Telephone Switchboard Operator at Cresson, Symbol No. HH-5, tour of duty 6:00 A. M. to 2:00 P. M., rest days Saturday and Sunday. These positions were located in the office of the Assistant Train Master. Each of the Claimants had seniority dates on the seniority roster of the Pittsburgh Region in Group 2.

Positions HH-9 and HH-5 were abolished effective July 5, 1956. The telephone switchboard work of the abolished positions which remained to be performed, was performed by the Group 1 clerical positions which remained in existence in the office of the Assistant Train Master at Cresson, Pa.

The abolished positions were re-established and advertised in Group 2 Bulletin No. 60, dated July 17, 1956, and were awarded to Claimants Violet Chaney and Rose A. McGuire effective July 25, 1956. Claimant Chaney resigned from the service of the Carrier September 4, 1956.

Claims were instituted in behalf of the Claimants in this case by the Brotherhood on August 23, 1956, under the provisions of Rule 7-B-1, substantially the same as outlined in the Statement of Claim shown above. The claims were progressed to the Manager—Labor Relations of the Carrier by means of a Joint Submission. The Manager—Labor Relations is "the chief operating officer of the Carrier designated to handle such disputes." (Railway Labor Act, Title 1, Section 3(i)). This Joint Submission is attached as Employes' Exhibit "A" and will be considered as a part of the Statement of Facts.

they intend when they sustain a claim for "monetary loss." It certainly does not comprehend holiday pay lost or rest day lost or any of the other matters which are stated in the Employes' claim. The term comprehends only the difference in the wages earned and what Claimant would have earned but for Carrier's actions where such are found to be violative of the Agreement. See Second Division Award 1638, Referee Carter, and Fourth Division Award 937, Referee Carey, in support of the Carrier's position as related above.

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 interpretations 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 Agreement between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties 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 any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimants or other employes are not entitled to the compensation which they claim.

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

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 his own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: The record shows that immediately prior to July 5. 1956 and October 16, 1957, there were two positions of Telephone Switchboard Operators. One operator worked from 6:00 A. M. to 2:00 P. M. and the other from 2:00 P. M. to 10:00 P. M. Both operators were employed from Monday to Friday, inclusive. No Telephone Switchboard Operator was employed on Saturdays or Sundays or between the hours of 10:00 P. M. and 6:00 A. M. on any day of the week. During these days and hours when no Switchboard Operator was assigned the switchboard was operated by other clerical employes assigned at that location. The record also discloses that the number of

Telephone Switchboard Operators fluctuated during the years as the need and technological changes required.

Effective July 5, 1956, the Switchboard Operators' positions were abolished because of the coal miners' holiday period starting June 30, and a strike in the steel industry starting July 1. As a consequence of these events there was a substantial diminution in the Carrier's operations which resulted in the abolition of the Switchboard Operators' positions. During the period that the positions were abolished the switchboard was operated by other clerical employes assigned at that location. On July 25, 1956 the two positions were re-established.

The two positions were again abolished, effective October 16, 1957 because they were not required. During the hours from 6:00 A. M. to 10:00 P. M., Monday to Friday, inclusive, the remaining clerical employes at the location operated the switchboard in the same manner as they did on Saturday and Sundays and during the hours when no Telephone Switchboard Operator was employed.

The Petitioner makes no allegation and submits no evidence to show that no one but a Group 2 employe operates the switchboard at Cresson, at all times, including the hours and days that no Switchboard Operator was on duty. The Petitioner has not challenged the Carrier's statement that the switchboard was operated by other clerical employes. Thus it seems clear that the switchboard at Cresson was not exclusively operated by Group 2 employes in the past, but even if this was so there is no reason why Group 1 employes cannot properly be assigned to operate the switchboard incidentally to their regular duties in accordance with Rule 3-c-2.

The Petitioner cites the Scope Rule and quotes that portion which lists Telephone Switchboard Operators as being a classification of employes under Group 2. Under a general Scope Rule that merely lists classifications of employes such listing, standing alone, does not establish an exclusive right to the work unless past practice, tradition and custom shows that the parties intended the exclusive right to do such work to Group 2. The evidence and practice is to the contrary. A reasonable interpretation of the Scope Rule would seem to be that where Switchboard Oprator positions exist that employes with Group 2 seniority rights are entitled to such positions.

It would therefore appear that the Petitioner has failed to show that the work involved is work that is reserved exclusively to Group 2 employes either undr the Scope Rule or by tradition, custom or past practice and therefore has failed to establish a violation of this rule.

The Employes take the position that the assignment of the remaining work of the abolished positions to the remaining Group 1 positions at the location involved was violative of Rule 3-C-2, the Scope Rule and Rule 3-B-1. The Carrier claims that the remaining work was assigned to Group 1 and Group 2 positions. This contention seems to be borne out by the Statement of Claim in the Joint Submission, page 22 of the record which reads:

> "The positions were not abolished in fact as the switchboard was operated by the clerks and crew callers, who remained on duty at that point."

Confirmation of the Carrier's assertion is found in the fact that the clerks are in Group 1 and the crew callers are in Group 2.

In any event the remaining work was assigned to employes coming within the Scope of the Clerks' Agreement and not to any employes outside of the Agreement. Such assignment of the remaining work of the abolished positions was in accordance with the provisions of paragraph (1) of Rule 3-C-2 (a). This provision of that Rule makes no distrinction as between Group 1 and Group 2 employes and merely states that the remaining work of an abolished position will be assigned to another position or positions covered by the Scope Rule of the Agreement when such other positions remain in existence at the location. The reassignment of the remaining work was so handled in the instant case.

Rule 3-C-2, subdivisions (c) and (d) does make reference to Group 1 by name. However, nowhere in the Rule is there a prohibition against assigning work to employes of Group 2 where the work was previously performed by employes of Group 1. Stated another way it is clear that there is no prohibition in the Agreement restricting the Carrier from reassigning the work of an abolished position to an employe in another seniority group under the same Agreement.

It is so well established under numerous Awards of this Division as not to require citation of authorities that it is beyond the authority of this Board to add to, subtract from or change the terms of an Agreement. We cannot depart from this maxim in order, by interpretation, to add a prohibition against crossing group lines which does not appear in the instant Agreement.

Under the reasoning set forth supra we find that the entire claim is without merit and it therefore becomes unnecessary to pass on other portions of the claims in the instant case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

The parties waived oral hearing;

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 did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1964.