

Award No. 12108

Docket No. CL-11941

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:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when clerical position, Symbol No. F-85, rate of pay \$412.26, incumbent P. A. Cyphers, located at the Freight and Passenger Station, East Liberty, Pa., Pittsburgh Region, was abolished April 3, 1957.

(b) P. A. Cyphers be allowed an eight hour day's pay beginning April 3, 1957, and on all subsequent dates until the violation is corrected. (Docket 484)

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.

Prior to April 1, 1957, there were three clerical positions located at the East Liberty Station, Pittsburgh, Pa. The Passenger Station and the Freight Station have previously been combined at this location and the office is maintained in the ticket office of the Passenger Station. These three positions were designated as Symbol No. F-85, rate of pay \$412.26, Symbol No. F-387, rate of pay \$373.64, Symbol No. F-390, rate of pay \$384.94.

CONCLUSION

The Carrier has shown that its actions here complained of were an exercise of its recognized managerial right to abolish positions and rearrange work in the interest of securing a more efficient and economical operation, and that they were in no way violative of the Clerks' Rules Agreement.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim 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.

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

(Exhibits not reproduced).

OPINION OF BOARD: The record shows that prior to April 1, 1957 a clerical position known as F-85 was located at the Carrier's East Liberty Station located in Pittsburgh, Pennsylvania. The position was transferred on this date to the Eleventh Street Freight Station in Pittsburgh. The only duties of this position that were transferred were the rating and billing duties. The holder of the East Liberty Station position was transferred with the position. Position F-85 was abolished on April 3, 1957 and the work remaining on the position at this time was assigned to other clerical positions at the location.

The work remaining on position F-85 at the time of the transfer to the Eleventh Street Station, April 1, 1957, other than rating and billing, was assigned to two clerical positions known as F-390 and F-387 at the East Liberty Station. The Petitioner calls attention to the fact that the transfer of work to the other clerical positions at the East Liberty Station did not take place until April 5, 1957. The Carrier answers this point by stating that the notices of April 5, 1957 merely confirmed what had been done. It is not disputed that only rating and billing were transferred to the Eleventh Street Station with position F-185. It would appear that since only the rating and billing was transferred to Eleventh Street the remaining duties of position F-85 stayed at the East Liberty Station.

It is not contended by the Petitioner that a violation of the rules took place when position F-85 was abolished at Eleventh Street and the work remaining on that position was assigned to other clerical positions at that station. Nor is there any claim of a rule violation when position F-85 with the rating and billing work was transferred to Eleventh Street. The Petitioner does not claim that before a position may be abolished it must be shown that any of the work of the said position must be discontinued or had diminished. The Agreement does not require that either of these conditions must exist before a position may be abolished. Rule 3-C-2 contemplates the abolition of positions and then sets up the procedure to be followed in distributing or assigning the work of the abolished position which must be followed to avoid a violation of the Agreement. Contrary to the allegation of the Petitioner that the Carrier did indirectly what it could not do directly the facts indicate that after abolishing the position in question the said Carrier then proceeded to assign the work in compliance with Rule 3-C-2.

The Petitioner states that the rates of pay of the two clerical positions

to which some of the work of the abolished clerical position was assigned were considerably lower than the rate of the abolished position. If this is the position of the Organization it should have proceeded by requesting a change in the rate of those positions and come forth with evidence in support of such contention. The Petitioner did not request a change in the rate of pay of these two positions and the claim before this Board does not encompass such a contention. Not having requested a change in the rate of pay this question is not properly before the Board.

The Petitioner further contends that the Agent at East Liberty performs many clerical duties that were the assigned duties of the clerical positions that had been in existence at this location. In answer to this claim the said Agent states that whatever East Liberty duties he does perform were performed by him before the position transfer took place. The Scope Rule in the instant case is general in nature since it sets forth positions and not the work done. Under these circumstances in order to prove that the duties performed by the Agent belong to the Clerks it must be established by a preponderance of the evidence that such work was traditionally, historically and customarily performed exclusively by the Clerks. The Petitioner did not sustain the requisite burden of proof.

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

That 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 Agreement was not violated.

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.