Award No. 12178
Docket No. CL-11894

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., 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 it abolished position of Clerk, Symbol F-268, rate of pay $386.06, located at the Freight Station, Indiana, Pa., Pittsburgh Region, effective with the close of business October 15, 1957.

(b) The position should be restored in order to terminate this claim and that Mrs. Helen W. George and all other employes affected by the abolishment of this position should be restored to their former status (including Vacations) and be compensated for any monetary loss sustained by working at a lesser rate of pay; be compensated for any loss sustained under Rule 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 position; 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 473)

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 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 Employes

The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreements 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 such action.

CONCLUSION

The Carrier has shown that the work of abolished clerical position F-268 was assigned beginning December 16, 1957, in accordance with the Agreement and that in any event the named Claimant and the unnamed Claimants alleged to be involved in this dispute are not entitled to the compensation claimed.

For the reasons herein given, no valid basis exists for a finding that any violation of the Clerks' Rules Agreement occurred in this case and, therefore, your Honorable Board is respectfully requested to deny the Employes' claim in its entirety.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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: When the Carrier abolished a Group 1 Clerk position and gave the remaining work of the Clerk to a Group 2 Warehouseman both covered by the Clerks' Agreement did it breach Rule 3-C-2 of the effective Agreement?

We hold no.

At the Indiana, Pennsylvania Freight Station on October 15, 1957, there were three employes: an agent, a clerk and a warehouseman. The latter two covered by the Clerks' Agreement. At the close of that day following prior notice the Clerk's position was abolished and her duties were taken over and performed by the Agent until December 15, 1957. The Agent's action up to that point constituted a breach of the Agreement for which the Carrier admits liability. Thereafter the duties were assigned to and with a few isolated exceptions performed exclusively by the Warehouseman who thereafter was paid the higher rate until in turn his position was abolished in 1959. No claim is here made by him.

The Clerk, Claimant here, contended that the Carrier's action violated the Agreement and seeks restoration in order to terminate this claim for a monetary figure as would be ascertained jointly by the parties.

The claim for the period October 16, 1957 to December 15, 1957 is sustained, in all other aspects it is denied. We take this action for the following reasons:

Rule 3-C-2 insofar as is here pertinent provides:

RULE 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 provisions of this Agreement.

* * * * *

(d) In the event the work of an abolished position is assigned to a Group 2 position, the rate of which is less than the rate of the position abolished, a study may be made of the position to which the work of the abolished position is assigned for the purpose of determining the proper rate of such position. The application of the rate established on the basis of such study will be effective as of the date the work is assigned to the position."

The Carrier is free to arrange its work in the interest of efficiency and economy as long as the Agreement provisions are complied with.

The Carrier has introduced evidence to show a decline in business at this location. The remaining Clerk work aggregated approximately 2½ hours and this was turned over to the Clerk. There is a dispute as to whether subsequent to December 15 the Agent did some work formerly done by the Clerk. But since he was training the Warehouseman and the Warehouseman was physically present when these isolated acts occurred the significance of these acts is not relevant.

There being compliance with the letter of the Rule we cannot find violation unless the assigning of Group 1 Clerk's work to a Group 2 Clerk is to be considered a violation. The Agreement provides that the remaining work is to be assigned to ". . . another position . . . covered by the Agreement . . ." There being no limitation within Groups we cannot accept such a contention as a violation.

We do not reach the questions of the alleged violations of the Scope and Rules 3-B-1, 3-D-1 and 4-F-1 since these questions are not properly before us.

It is true the Claimant contended Carrier violated "the Rules Agreement . . . particularly Rule 3-C-2". Thus, technically a violation of each and every rule of the Agreement was claimed. But these sections referred to above were never specifically identified on the property. On the property, the entire discussion related to 3-C-2 and it was not until the filing of the Ex Parte Submission that the subject of these other Rules was raised. We do not believe that a claim can be one thing on the property and something different before this Board.

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 there was violation from October 16 to December 15, 1957; in all other respects the Agreement was not violated.

AWARD

Sustained in part and in all other respects Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.