

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1, 2-A-2, 3-B-1, 3-B-2, 3-C-2, 3-E-1 (b) and 4-F-1, as well as the Scope, when it abolished certain positions in the Timekeeping and Labor Distribution Departments in the Office of the Auditor of Expenditures, Chicago, Illinois, and assigned the duties of these positions to employees in the IBM Department, and to employees in other Seniority Districts; also appointed employees to newly created positions and transferred rates of pay from one position to another.

(b) All Timekeeping and Labor Distribution positions be reestablished to their original status as of July 1, 1955, and August 1, 1955, and August 1, 1955, respectively; and all such transferred work be returned to the Seniority District of the Auditor of Expenditures, Chicago, Illinois; also all employees adversely affected be compensated for all monetary loss.

(c) All positions set up to handle work due to the IBM operation in the Office of the Auditor of Expenditures, Chicago, Illinois, be bulletined and awarded in accordance with Rule 2-A-1. [Docket 26]

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 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 Employees between the Carrier and this Brotherhood which the Carrier has filed with the

will be offered by the Employees' to indicate that any damage has accrued. Under these circumstances, such a claim is too vague and indefinite to be considered by this Board and does not provide any basis upon which a valid award can be made.

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 Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties 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 changes made in its method of performing timekeeping and labor distribution work in the former Western Region in 1955 were not prohibited by or in violation of any provision of the Clerks' Rules Agreement. It also has shown that the performance of certain disputed work by Messrs. Nikoden and McClellan incident to placing the changes in effect likewise caused no violation of the 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to July 1, 1955 the Carrier maintained various positions of Timekeeper and Labor Distribution clerks in the Office of Auditor of Expenditures located at Chicago. The duties of the Timekeeper were to receive time and work reports from the following employees: Block Operators, station employees, clerks, yardmasters, train dispatchers, movement directors, Maintenance of Way communication, signal employees, and maintenance of equipment employees. Employees of all groups involved rendered their service in seniority districts separate and apart from the clerical seniority district of the Supervisor of Regional Expenditures Office. Upon receipt of various work and time forms from the above employees, the Timekeepers would check them for accuracy, post information and transfer the information to IBM cards for further processing by the IBM Department. This latter duty of the Timekeepers was called mark sense. The time cards of Maintenance

of Way, signal and maintenance of equipment employees were posted by Timekeepers and passed to Labor Distribution Clerks who copied from the forms information as to work performed and posted the same against the proper accounts.

On July 1, 1955 a change in procedure was introduced and the employees in the field were required to record information on the IBM cards rather than on the various report forms previously used. Thus the employees in the field mark sensed the cards and eliminated the need for the Timekeepers and Labor Distribution Clerks. The cards were then sent direct to the IBM Department for processing into a final pay check for the employees.

In order to instruct the employees on the property how to complete IBM cards (mark sense) two employees of the Timekeeping Department were selected unilaterally to instruct the employees how to fill out the cards. Also additional help was utilized in the IBM Department to take care of the cards as they came in. These positions were key-punch and machine operator positions.

The question to be decided is: Did the Carrier violate the Agreement when it assigned the work of completing IBM forms on the job site rather than required the information to be copied on IBM forms by Timekeepers and Labor Distribution Clerks in the Auditor's Office?

It is the contention of the Claimants that Timekeepers and Labor Distribution Clerks performed mark sensing, posting and labor distribution work in the Office of Auditor of Expenditures and that the transfer of this work unilaterally to other seniority districts was a violation of Rules, 3-B-1, 3-B-2, 3-C-2, 3-E-1 (b) and 4-F-1. They further contended that the use of two Timekeepers selected to instruct the employees in the proper method of mark sensing and reporting labor distribution work was proof of the fact that the work belonged to the clerks and had been so transferred. A claim had also been instituted on the grounds that 2-A-1 and 2-A-2 of the Rules had been violated when these two employees had been selected unilaterally and without regard to the above cited rules.

The Carrier contends that the changes in the timekeeping procedures did not result in the transfer of any work from the Timekeeper's Office to the field. It was their argument that the work no longer existed as the time records when received by the Auditor's Office were in final form for processing by IBM machines. In addition the work of recording the current pay period information by mark sensing on the Semi-Monthly Time Card, IBMC, was done by employees in the field who previously recorded the same information on various time and job reporting forms. Thus the Carrier's conclusion is that in essence the same employees in various seniority districts perform the same work, as previously performed, only on different reporting forms and no transfer of work was accomplished, but an elimination of work.

An examination of the pretinent facts reveals an unusual situation. It is not the situation present when (1) Work is taken from one group and given to others in another classification who had not previously performed similar work; or (2) a situation where work has been splintered and the remaining work has not been given to those who previously performed it. In the dispute before us all classes of employees performed the same type of work, making out job reports. The employees of the Auditor copied from one report form to another. Employees in the field copied information from the job site to a report form which was subsequently consolidated in the Auditor's Office on an IBM form. The field employees are doing the same work they did previous to the

change. The IBM Department is doing the same work they did prior to the change. However, the latter work has been expanded. What change did take place after July 1, 1955? In the field one reporting form was substituted for another. The change in form eliminated the necessity for the Timekeepers to fill in, or as stated sense mark IBM Cards or the Labor Distribution Clerks to record job costs. Did the substitution of one reporting form for another violate the Agreement? Did the employees of the Auditor's Office who are parties here have the exclusive right under the Rules, to complete IBM forms? Is there a need for the work previously done by employees of the Auditor?

In order to answer the above questions an examination of the claim reveals and we quote:

" . . . when it abolished certain positions in the Timekeeping and Labor Distribution Departments in the Office of the Auditor of Expenditures, Chicago, Illinois, and assigned the duties of these positions to employees in the IBM Department, and to employees in other Seniority Districts; . . ."

The record shows that the field employees always did the work of completing forms, showing employee concerned, jobs, rate, etc. The employees in the Auditor's Office duplicated the work. The expression mark sense, as here used, means filling in an IBM form. This form contained the same information as was contained on the former general forms. Thus can we say that the work was abolished and assigned to employees in other seniority districts? We are of the opinion that the answer is no. The work has always been done in the field in various seniority districts and is still being done in the field in various seniority districts. What has been changed under the facts herein? The form for recording the job and rate information has been changed from a general form to an IBM form. Could the Carrier have substituted forms other than IBM forms that would have enlarged the duties performed by employees in the Auditor's Office? We are of the opinion that they could have enlarged such forms. Thus by the same reasoning the work of recording the original work in the field could be reduced. The only limitation being that work could not be withdrawn from one group and given to another class of employees unless they had also been doing the same type of work or the **agreement between the parties was silent on the subject.** In this instant a consolidated form completed as always, by the field men, eliminated the **need for recopying such information by the Claimants.** The magic words, mark sense, means just putting information on an IBM Card. This the field men did in the past and if they continue to do this work on other forms we see no transfer, but elimination of work. **Nothing in the Agreement prevents a change in forms used to record information unless such change results in a transfer of work.** Here no additional work was done in the field, no different type of work was done in the field. What took place in the field? General forms were abolished and IBM forms substituted containing the same information.

Furthermore, we cannot say that the completion of a form is the characteristic of any class of employees. What places work within a particular Scope Rule is the contents of the form, rather than the form itself or the completion of it. Here the contents of the form was information collected in the field by field employees and entered on forms. This work they did prior to and subsequent to July 1, 1955.

From the record we can preceive of no particular change in the function of the IBM Department subsequent to the change in procedure, with the

exception of its growth. The increased work load created a need for additional operators. Now these employees receive their cards from the employees in the field rather than those in the Office of the Auditor. The contention in the record that Rule 4-F-1, was violated because the work abolished was being performed by key-punch and machine operators at a lesser rate of pay than the abolished positions. Rule 4-F-1, states:

“Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay . . .”

We are of the opinion that the routine work of IBM Operators was and has always been a separate and distinct type of work from that of Time-keepers and Labor Distribution Clerks. Rule 4-F-1, was designed to prevent down grading of positions when the work was similar but classified differently or consolidated with lower rated positions. However, this situation is not present in the dispute before us so we are of the opinion that 4-F-1 was not violated.

An examination of Rules 3-B-1, 3-B-2, 3-C-2, 3-E-1 (b) and the facts do not reveal that Rule 3-C-2 has been violated. That rule applies to situations where work at a location has been abolished but work remains that previously was assigned to that position. What is to be done with the remaining work. Who will perform it. Rule 3-C-2 provides for those situations. The facts before us are of a situation where the work eliminated was work incident to and directly attached and performed by another class or craft. Rule 3-C-2 (b) provides for such situations. Rule 3-E-1 (b) provides for situations where new offices or departments are organized to take over work now being performed in other offices. No new departments were organized to take over work previously performed by others. The only change was the substitution of forms. In reply to the alleged violation of Rule 3-B-1, transfer of work to employees from one district to another district, fails to take notice of the fact that there has been no change in the seniority districts. The various seniority districts continue to report job information to a central seniority district as was done prior to July 1, 1955.

In Award 3877 offered in support of the Claimant's positions, we distinguish on the facts. In this award when the Yardmasters relinquished the work and it was assumed by the clerks exclusively it became their work. Before us the employees in the field supplied all information on forms prior to July 1, 1955. They never could relinquish this duty as it was incident to their work. We also note that the two exceptions cited in the above award apply to the facts at hand.

“ . . . may not be withdrawn therefrom and returned as incidental duties of a yard master unless and until (1) the clerical position wherein the duties are performed is abolished, (2) and not then unless no position under the agreement exists at the location where the abolished position is to be performed. . . .”

In Award 4044, we cite:

“ . . . That rule leaves the Carrier no power to assign any of the work of an abolished position to any employe not covered by the Agreement, so long as other positions remain in existence at the location where the work of the abolished position is to be performed. . . .”

In the claim before us no work remained in existence at the location where the work of the abolished position was to be performed. The work in the

field was performed in the same manner, as always, but recorded on a different form which eliminated the employees whose duties were contingent on a particular set of forms. In Award 7287 we cite:

“ . . . That in accordance therewith it was mandatory that the remaining work should have been assigned to the two other clerical positions covered by the Agreement, which were maintained at this location. . . .”

In the instant claim no clerical position remained at the Office of the Auditor which distinguishes the awards offered in support of the claim. Thus we are of the opinion that the Agreement, specifically Rules 3-B-1, 3-B-2, 3-E-1 (b) and 4-F-1, were not violated.

In order to prepare employees in the field how to complete the IBM Cards, two employees from the Auditor's Office were assigned as a training cadre to instruct in this work. It has been alleged by the Claimants that this work was in violation of Rule 2-A-1 and 2-A-2 of the Agreement. This section of the Agreement limits the authority of the Carrier to unilaterally choose certain employees without having the position bulletined.

Upon an examination of the record and Awards 4027 and Award 6347 we are of the opinion that this assignment should have been bulletined according to the rules. The record does not indicate that any particular skill was required to do this work nor does it reveal that other clerks in the office were not also capable of such work. Also the Carrier would be amply protected by the Agreement as whomever bid for the position would have to be qualified. Citing Rule 2-A-2:

“ . . . Fitness and ability being sufficient, seniority shall govern. . . .”

Thus we are of the opinion that Rule 2-A-1 and 2-A-2 of the Agreement was violated.

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 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 as provided in Rules 3-B-1, 3-B-2, 3-C-2, 3-E-1 (b) and 4-F-1, was not violated.

That the Agreement as provided in Rules 2-A-1, 2-A-2 was violated.

AWARD

Claim denied in part and sustained in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.