Award No. 12364
Docket No. CL-12148

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 (GL-4801) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished one position of Laborer–Stores Delivery, Symbol CC-6030, and two positions of Store Attendant, Symbols S-47 and S-48, at the Westbound Repair Yard, Altoona, Pennsylvania, Pittsburgh Region.

(b) The positions should be restored and transferred to the Eastbound Repair Yard, and the incumbents of the abolished positions, N. C. Harpster, Symbol CC-6030, M. R. Woodring, Symbol S-47, and J. L. Beschler, Symbol S-48, should be compensated for all monetary loss sustained commencing January 1, 1958, and continuing until the violation is corrected. [Docket 540]

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.

Prior to January 1, 1958, the Claimants in this case, N. C. Harpster, Laborer–Stores Delivery, M. R. Woodring and J. L. Beschler, Store Attendants, were the incumbents of regular Group 2 positions, at the Westbound

tion 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 such action.

CONCLUSION

The Carrier has shown that its action in abolishing the Claimants' positions was proper and did not violate the provisions of Rule 3-C-2 nor any rule of the Clerical Rules Agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute about the essential facts which gave rise to the present controversy. Effective January 1, 1958, the operation of the Westbound Repair Yard, Altoona, Pennsylvania, was discontinued and part of the employes were transferred to the Eastbound Shop. The work which they had formerly performed was assigned to M and E Car Shop employes at the Eastbound Shop. It is not controverted that this work had for a long time been performed at this location by M and E Car Shop employes.

Petitioner frames the issue in the instant case as being whether or not the Carrier violated the Rules Agreement, particularly Rule 3-C-2, when it abolished three positions at the Westbound Repair Yard and transferred the work of the abolished positions to the Eastbound Repair Yard, where it was assigned to M and E Car Shop employes not covered by the Clerks' Agreement. The Carrier asserts that not only was Rule 3-C-2 not violated but, the conditions requisite for its application do not exist.

In pertinent part Rule 3-C-2 reads as follows:

"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."

The Carrier takes the position that Rule 3-C-2 has no possible application to the case at bar because no work of the abolished positions remained to be performed. Therefore, in a situation where a rule has no application, such a rule cannot be said to have been violated. At the Eastbound Storeroom, Maintenance of Equipment Department employes delivered material which they used in the performance of their work from the Storeroom to working

bins in the repair yard and from the bins to the individual work locations where the freight cars were repaired. Neither prior to nor subsequent to December 31, 1957, had this work ever been assigned to or performed by clerical employes at the Eastbound Repair Yard. The Carrier's Statement of Facts notes that this delivery work was not a part of the advertised duties of the two Group 2 Store Attendant positions at the Eastbound Storeroom and they have never performed it. In other words, stores delivery service has never been performed at the Altoona Repair Yard.

At the Westbound Storeroom, as indicated by the Claimants' advertised duties listed in the Statement of Facts, the Claimants performed the work of delivering material from the Storeroom to the working bins and from the bins to the work locations. However, effective December 31, 1957, the Westbound Repair Yard was eliminated, the Storeroom closed down, and all the work of the Claimants' abolished positions ceased to exist and did not remain to be performed by anyone. In a word, the Carrier takes the position that Rule 3-C-2 can have no application to the instant case because no work of the Claimants' abolished positions remained to be performed by anyone. The Carrier insists that the delivery service performed by the Claimants was not transferred. It ceased to exist. On this state of facts the Carrier suggests that the Employes cannot seriously argue that the Carrier is required, upon the closing of a facility at one location, to transfer work to another location where such work had never before been performed. There is no dispute that stores delivery service was never in effect at the Eastbound Repair Yard.

Petitioner takes the position the Stores Delivery Service cannot be discontinued just because the work is transferred to another shop and points to Third Division Award 4045 as sustaining its position. Also, Third Division Award 4448 reads in part as follows: "Work that has been embodied within the Scope of an Agreement cannot rightfully be removed therefrom."

Award 4045 (Referee Fox) involved the same parties and Rules Agreement as the instant dispute and also involved the same general question of stores delivery service. The Carrier had established stores delivery service at East Altoona Car Shop and Enginehouse, which work was performed by Stores Personnel. Subsequently, Carrier discontinued the stores delivery service and abolished the Group 2 positions. After abolishment the work was performed by MofE Department employes. The claim was sustained on the basis that the work of the abolished positions was not assigned in accordance with sub-paragraph (1) of Rule 3-C-2 (a) which appears supra.

In the instant case, the Carrier argues the situation is completely different. Here, the work of the abolished positions ceased to exist and none of it remained to be performed by anyone. Furthermore, when the entire Westbound Repair Yard facility was closed, Rule 3-C-2 could not apply because no positions covered by the Clerical Agreement, or by any other Agreement, remained in existence at the location since the Westbound Repair Yard disappeared as an operational location. Thus, distinguished on its facts, it appears that Award 4045 has no application to the instant dispute. Award 4448 (Referee Wenke) concerns a situation wherein a Group 2 position of crane operator was abolished and its duties, all of which remained to be performed, were assigned to an MofE Department employe. Here the distinguishing feature of the Award is obvious. In the instant case, no work of the abolished positions was removed from the coverage of the Clerical Agreement by assigning it to another craft or class of employes, for the simple reason that no work of the abolished positions remained.

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 based on the facts of record it seems clear 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 31st day of March 1964.