

Award No. 12365

Docket No. CL-12162

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-4808) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished the Station Baggage-man position of G. H. Henry, at the Freight Station, Tasley, Virginia, Chesapeake Region, effective February 21, 1958.

(b) The position should be restored in order to terminate this claim, and that G. H. Henry and all other employees 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 523]

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 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

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

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 13, 1958, the Agent was the Carrier's sole employe at the Tasley, Virginia station. Effective January 12, 1958, one Group 1 clerical position and three Group 2 positions of Station Baggage-men, including the position held by the Claimant, were transferred from Cape Charles, Virginia to Tasley. These transfers came about as the result of rearrangements in work locations due to the discontinuance of passenger trains designated 454 and 455.

One position of Baggage-man was abolished on January 24, 1958. A second position of Baggage-man which was held by the Claimant was abolished on February 21, 1958. After these changes the remaining force consisted of one Agent, one Group 1 clerical position and one Group 2 Baggage-man.

The Petitioner alleges that the Carrier has violated the Scope Rule and Rule 3-C-2 of the Agreement. The Scope Rule in the instant case is general in character and merely lists classes of employes but does not describe the work done by these classes of employes. Carrier contends that this Division has consistently held in a long line of decisions that in the above type of general Scope Rule the principle which applies is as follows:

Award 6824 (Referee Shake):

"Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimant's right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests upon the employes."

Petitioner's claim is based on the fact that the remaining duties of the abolished position were assigned in part to a Group 1 clerical position and in part to a Group 2 Baggage-man position remaining in existence at the location involved. Petitioner alleges that Rule 3-B-1 is violated when work of an abolished Group 2 position is assigned to a Group 1 position on the basis that this Rule prohibits the crossing of seniority lines.

We feel that the Petitioner has failed to show that the Agreement prohibits the Carrier from crossing seniority districts from Group 1 to Group 2 and vice versa. In order for the Petitioner to prevail in a claim of this nature, it is essential for it to prove by a preponderance of credible evidence that the Employees have traditionally, customarily and exclusively performed this work. But where work can be assigned to two or more crafts, the assignment to one craft will not give rise to a claim by the other craft. See Awards 7031, 7784, 7954, 8001, 12106, 12108 and 11993.

The Organization called attention to Award 3582 and cited this case as support for its position:

" * * * At the most, these provisions recognize that certain positions might be made up of both classes of work or that the employes might be transferred from Group 2 to Group 1 positions * * *. As we view these facts the Carrier, in order not to work Group 1 employes

on overtime required Group 2 employees to suspend work for 3 hours and 15 minutes and perform Group 1 work. We think there was a clear violation of Rule 4-C-1 of the Agreement:

Employees will not be required to suspend work during regular hours to absorb overtime."

Thus the above Award turns not on a prohibition to transfer work across Group lines, but solely on the Carrier's contractual obligation not to suspend work to absorb overtime. This case is not apposite to the facts involved in the current dispute.

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 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.