Award No. 12479
Docket No. CL-12307

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, 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-4854) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1 and 3-C-2, when it abolished three regular, and one relief, clerical positions at Columbia Yard Office, Columbia, Pennsylvania, Philadelphia Region, and failed to assign the remaining work of the abolished positions to the remaining clerical position or positions at the location where the work was to be performed, but assigned it to Operators, Yard Conductors and an Agent not covered by the Rules Agreement.

(b) The Claimants, R. W. Wise, H. C. Strawbridge, F. X. Duggan and W. L. Salzman, should each be allowed eight hours pay a day, as a penalty, for February 16, 1958, and all subsequent dates until the violation is corrected.

[Docket 648.]

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.

OPINION OF BOARD: It is the opinion of this Board that the agreement has not been violated.

This claim arises on behalf of four clerks whose positions at Columbia Yard were abolished on February 16, 1958. On that date, all of the work which the clerks had been performing was assigned to the one remaining clerk position except the work of directing crews. The work of directing crews was assigned to the yard agent and other employes not covered by the Clerks' Agreement.

The Organization contends that all of the work which was previously performed by the clerks should be assigned to clerk's positions. In support of this contention, the Organization cites Rule 3-C-2 of the agreement, which states:

> "(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."

The Organization points out that Carrier has not complied with the provisions of this rule.

Carrier admits that it has not complied with Rule 3-C-2. It is their contention that this rule does not apply to the assignment of the work of directing crews which had been previously performed by clerks whose position has been abolished. We agree with this contention.

Before 3-C-2 becomes applicable, the Organization must show that the Carrier intended to grant to the clerks, in the contract between them, the right to perform this work of directing crews. This can be shown by the express language of the agreement, if present. If there is no express language indicating such intent, then the requisite intent may be shown by a proper showing that the work had been traditionally performed by the clerks or by showing some other relevant facts. Once it is shown that the parties intended that the work was to be performed by the clerks exclusively, then 3-C-2 becomes applicable upon abolishment of a clerks position.

In the case at hand, the Organization has failed to show that the work of directing crews belonged to the clerks exclusively. The Scope Rule does not contain express language granting such work to them. Further, past practice fails to show that clerks traditionally perform this work to the exclusion of other employes. See Awards 8218 (Johnson), 9781 (Fleming) and 9822 (Larkin).

In the absence of any showing that the parties intended the clerks to have the exclusive right to perform the work, such work may be assigned to clerks and/or to some other craft as well. Once it is assigned, (wholly or partially), to a clerks position, it does not thereby permanently become exclusive clerks work by reason of such assignment alone. However, if we apply 3-C-2 as the Organization contends that it should be applied, then all work which was ever assigned to clerical employes would become the exclusive work of clerks so long as a clerk's position remains at that location. Such an interpretation would cause rigidity and inflexibility which was obviously not intended by the parties to the agreement. If such a rigid intent was present it would have been clearly expressed in the Scope Rule rather than merely being suggested in Rule 3-C-2.

There being no showing in the record that the clerks were contended to have the exclusive right to the work of directing crews, Rule 3-C-2 does not apply and the claim must be denied.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.

LABOR MEMBER'S DISSENT TO AWARD No. 12479
DOCKET CL-12307

This Award evidences another Referee who saw fit to ignore the clear and unambiguous language of Rule 3-C-2 and substituted his own conclusion as

to what was intended by the parties. In order to defeat the clear language of Rule 3-C-2, which is printed in the Award and will not be repeated here, it was necessary for the Referee, as have others before him, to use a general test promulgated at this Board which was neither contemplated nor intended when the plain language of Rule 3-C-2 was agreed to. Rule 3-C-2 is a specific rule dealing with the disposition of work of an abolished position. The conditions contemplated and spelled out clearly in the first two paragraphs thereof prevailed in this case and neither alternate methods nor impossible "tests" should have been applied to render the mandatory language of the rule meaningless.

The gravamen of my dissent and opposition to this and other erroneous decisions regarding Rule 3-C-2 is precisely this:

Rule 3-C-2 is a special rule. It is included in the Agreement of the parties. This Award, and others equally erroneous arrived at by various Referees, is based on a general rule which is not found in the Agreement. The test of "exclusivity" has erroneously been used to render Rule 3-C-2 of benefit only to the Carrier. Many prior well-reasoned Awards have applied the strict and literal meaning to the mandatory language of Rule 3-C-2. That language is still the same, only the Referees have changed. They have been persuaded to use a general rule, or test, to invalidate a special rule which clearly and expressly forbids the removal of any work of an abolished position except under conditions spelled out in the rule.

For the above and other reasons I dissent.

/s/ D. E. Watkins
D. E. Watkins,

Labor Member
5-27-64

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 12479, DOCKET CL-12307

(Referee West)

The Dissentor's opposition to this decision is essentially the same as previously voiced in the dissent to Award 11963, et al, which we have previously answered. Our answer there is incorporated here by reference.

We would make one additional observation. We now have in the neighborhood of sixty (60) awards from this Board interpreting Rule 3-C-2 and/or the Scope Rule in the manner objected to by the Dissentor. These awards have been rendered by twenty-three (23) different neutrals in the past ten years. In each case, the arguments of the Petitioner have been found unpersuasive. Their contentions are found wanting because they lack conviction. The Petitioner has a legal and moral responsibility to accept these decisions as a final and binding interpretation of the contract, which is precisely what the Railway Labor Act provides. In Section 3. First (m), the Congress said:

> "* * * the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. * * *"

In short, it is contrary to the stated purpose of the Act that we should be persistently harassed with the identical interpretive question over and over, particularly when we have set forth our ruling on the question in clear and unimpeachable language. The Organization has a legal obligation to accept these decisions as a final resolution of the issues presented. We trust they will comply with this statutorily imposed obligation.

W. F. Euker

R. E. Black

R. A. DeRossett

G. L. Naylor

W. M. Roberts