

Award No. 13060

Docket No. CL-12834

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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-5000) 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 No. G-210, rate of pay \$456.58, located at the Assistant Train Master's office, Pitcairn, Pennsylvania, Pittsburgh Region, effective July 17, 1959, and again on August 5, 1959.

(b) The Claimant, W. P. McKinney, should be allowed eight hours' pay a day, from October 1, 1959, to November 30, 1959, inclusive.

(c) The position should be restored in order to terminate this claim and that W. P. McKinney 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 beginning December 1, 1959, and each day until adjusted, 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 808)

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 a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

IV. 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, which constitutes the applicable Agreement between the parties, 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 interpretation 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 Agreement between the parties to it. To grant the claim 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 the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

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: In a Joint Statement of Agreed Upon Facts, the parties set forth the following: Claimant, W. P. McKinney, occupied clerical position Symbol No. G-242 in the office of Assistant Train Master, Pitcairn, Pennsylvania from October 1, 1959 to November 30, 1959. Prior to July 17, 1959, in the same office, A. G. Davis held a position of Clerk, Symbol No. G-210, first trick. His duties included the handling of engine and train service cards. Effective July 17, 1959, Position G-210 was abolished; and the remaining duties were assigned to the clerks in the Assistant Train Master's office. On July 20, 1959, Mrs. Marion Adams, incumbent of position of Clerk, Symbol No. G-38, was transferred from Assistant Road Foreman's office to the Assistant Train Master's office; and she was assigned the duty of handling engine and service employees time cards. Clerical position G-210 was reestablished on July 30, 1959, and the duties were returned to this position. Mrs. Adams remained in the Assistant Train Master's office. On August 5, 1959, clerical position G-210 was again abolished; and the remaining duties were assigned to the clerical positions, including G-38, in the same office. Effective August 17, 1959, position G-38 was transferred to its original location.

The Brotherhood makes claim that Rule 3-C-2 was violated when Carrier abolished clerical position Symbol G-210 and assigned a part of the remaining duties to an employee who was not employed in the same office. It requests compensation for W. P. McKinney and for all other employees affected by the abolishment of this position.

At the outset, Carrier requests that the claims be barred for non-compliance with the provision of Rule 7-B-1 (a). It maintains that the claims

were not presented to the Claimant's immediate supervisor within ninety days from the date he received his pay checks for the pay periods covering July 17 and August 15, 1959. Since Carrier did not raise this issue at any time during the handling of the case on the property, it is improper to consider it now; and the dispute is before this Board on its merits.

In respect to the questions of the violation of Rule 3-C-2, we find that this rule does not contain any provisions restricting the right of Carrier to abolish positions. It sets up the procedure to be followed in assigning remaining duties at the same location after the abolishment of the position. When position G-210 was abolished July 17th, the remaining duties were properly assigned to the clerical positions because they were left in the same office. This action was, therefore, in accordance with the rule.

We find no restriction in the Agreement which prohibits Carrier from transferring position G-38 from the office of Assistant Road Foreman of Engines to the office of Assistant Train Master. When the employee of Position G-38 became part of the clerical force of the office of Assistant Train Master, Carrier could properly distribute clerical duties of that office to this clerk. Thus, the assignment to Mrs. Adams of handling engine service employees' time cards was in compliance with Rule 3-C-2 for these were duties given to a clerical position on the same location. Later Carrier's decision to transfer position G-38 together with the incumbent Mrs. Adams was within its rights since no rule of the Agreement denies this prerogative.

In view of Carrier's compliance with Rule 3-C-2, we cannot assume that Carrier deliberately attempted to circumvent the rule by transferring position G-38 from one office to another and back again so that the Clerk to the Assistant Road Foreman could absorb a part of the remaining duties of the abolished position. As in Awards 12420 and 12809, we take the position that the controlling principle in determining this dispute is not the intent or reason which led Carrier to make the changes but the question of whether or not the rules were complied with.

Carrier did not violate Rule 3-C-2 and hence, the claims are without merit.

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

The Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.