

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 (GL-5041) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule and Rules 3-C-2, 3-E-1 (b), and 4-F-1, when it rearranged the duties of clerical positions Symbols No. F-90-F, and No. F-94-F, at Muskegon, Michigan, Northwestern Region, effective April 30, 1958, and then transferred position F-94-F, from Muskegon to Grand Rapids, Michigan, Northwestern Region, without an agreement with the General Chairman.

(b) Claimants R. K. Lemke, incumbent of position F-94-F, and D. F. Lenhart, incumbent of position F-90-F, should each be allowed eight hours' pay a day for May 1, 1958, and all subsequent dates until the violation is corrected; 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 positions; 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 positions; be reimbursed for all expenses sustained in accordance with Rule 4-G-1 (b); that this claim shall continue until the violation is corrected; that the total monetary loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement. (Docket 866)

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.

money earned in wages and salary during regular hours in other gainful employment. The Carrier is therefore entitled to deduct the latter amount from the amount of wages or salary which would have accrued to Claimant if he had not been held off his regular assignment." (Emphasis ours.)

It would be difficult to find any clearer expression by this Board of what is intended when it sustains a claim for "monetary loss". The term comprehends only the difference in the wages earned and what would have been earned but for the Carrier's action, where such are found to be violative of the Agreement, and it certainly does not comprehend any of the other matters which are stated in the Employees' claim. See Second Division Award 1638 (Carter) and Fourth Division Award 937 (Carey) in further support of the Carrier's position in this regard.

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 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 thereto. To grant the claim of the Employees 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 no violation of the Rules Agreement occurred and, therefore, your Honorable Board is respectfully requested to deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 30, 1958, R. K. Lemke and D. F. Lenhart occupied two Group 1 clerical positions, Position F-94-F and Position F-90-F, at the Freight Station, Muskegon, Michigan, Northwestern Region. The duties of these positions were rearranged effective April 30, 1958, and Position F-94-F was transferred from Muskegon to Grand Rapids, Michigan on May 1, 1958. This position was then abolished June 2, 1958.

Mr. Lemke and Mr. Lenhart make claim that Carrier violated the Scope Rule and Rules 3-C-2, 3-E-1, and 4-F-1, and they request compensation as set forth in Part (b) of their claim. They contend that Carrier accomplished indirectly what it could not do directly under the applicable rules of the Agreement. It is their position that Carrier's purpose in re-arranging the duties of Clerical Positions F-94-F and F-90-F at Muskegon, in transferring

Position F-94-F to Grand Rapids, Michigan, and finally in abolishing that position, was to make possible the assignment of part of position F-94-F's duties back to its original location at Muskegon.

The Claimants point out that when the Brotherhood Division Chairman and the Local Chairman visited the Muskegon Freight Station unexpectedly on the morning of December 15, 1958, they found the Agent preparing a demurrage report. They also learned that he made a track check, prepared a switch list for the use of the switching crew, and filled out the over, short and damage forms and other reports which had in the past been properly assigned to clerical position under the Agreement. In addition, they found that the Car Inspector also performed work previously assigned to other clerks, such as the preparation of Empty Car Bills, Form C. T. 212 to which he attached C. T. 1350 Forms which were previously prepared by him. This work of the Car Inspector and of the Agent, Claimants maintain, was part of the work that incumbents of the Positions F-94-F and F-90-F performed until it was taken away from them on April 30, 1958 and assigned to the Agent and Car Inspector in violation of the Scope Rule.

We find that the Scope Rule involved in this dispute is of the general type which merely lists classifications of employees without describing the work to be performed. It cannot, therefore, be used to support the claim of exclusivity. In order to prove that the duties performed by the Agent and Car Inspector belonged to clerks, Claimants must explain the exclusive right through custom, tradition, and practice. In respect to this question Carrier maintains that some of the duties enumerated by the Brotherhood representatives after their visit to Muskegon Freight Station were not performed by the Agent. It also asserts that some of the work which it admits the Agent and Car Inspector did perform was work that does not accrue exclusively to clerks and had been performed by the Car Inspector and Agent prior to April 30, 1958. Although Claimants contend that the duties in question were traditionally performed by the clerks, the record shows no proof to support this position.

We further find that Rule 3-C-2 is not applicable to the instant dispute. This rule concerns the procedures to be followed in distributing or assigning work after the position is abolished. The claim under consideration involves the transfer of Position F-94-F from Muskegon to Grand Rapids on April 30, 1958, but the position was not abolished until June 2, 1958. Since the claim involves an existing position, Rule 3-C-2 was not violated.

We also find that Rule 3-E-1 (b) does not apply to the case at bar. This rule deals with a situation involving a transfer of a clerical position from one seniority district to another seniority district. The instant claim involves a transfer within a single seniority district. Our position is in accord with Award 12285.

Finally, Rule 4-F-1 is not pertinent because this dispute is not concerned with the abolishment of established rates of pay and positions to create new positions covering the same class of work at a reduced rate of pay.

In view of our findings that there were no violations of the Scope Rule and Rules 3-C-2, 3-E-1 (b), and 4-F-1, the question of whether Carrier's action was a device to screen its real purpose is not controlling. Our position is consistent with the principle enunciated in Awards 12420 and 12809. The Agreement was not 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

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.