

Award No. 13089
Docket No. CL-12882

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, 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-5019) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-1, 3-C-2, and 3-E-1, when it reassigned certain duties of Clerical Position Symbol No. K-16-D, located in the Track Supervisor's office in the Freight Station, Crestline, Ohio, Northwestern Region, allegedly transferred the position to the Track Supervisor's office at Lima, Ohio, Northwestern Region, effective November 12, 1957, then abolished Clerical Position Symbol No. K-35-D, at Lima, Ohio, effective November 15, 1957.

(b) This consolidation or combination of offices should have been negotiated under the provisions of Rule 3-E-1 (b); the position should be restored at Crestline in order to terminate this claim; that C. L. Poth and all other employees adversely affected by the transfer and abolishment of the positions 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 Rules 4-A-1 and 4-C-1; 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 compensated 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; time allowed to be retroactive to November 8, 1957, and for subsequent dates until corrected. (Docket 775.)

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

CONCLUSION

The Carrier has shown that the present dispute was not handled on the property in accordance with the applicable rules of the Agreement governing the usual manner of handling claims and grievances; and, therefore, under the Railway Labor Act is not a proper one for handling by this Board and should be dismissed. The Carrier also has shown that none of the actions complained of which form the basis of the claim were in way violative of the Clerks' Rules Agreement and that the Claimants are not entitled to the compensation requested in the claim. Therefore, the Carrier respectfully submits that your Honorable Board, if it does not dismiss the claim, should deny it in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: In a joint statement of facts, the parties agree that prior to November 12, 1957 Claimant Poth was regularly assigned to Clerical Position K-16-D at Crestline, Ohio with certain assigned clerical duties. On November 8, 1957 a part of these assigned duties amounting to about two hours work was transferred to other clerks at a different office at Crestline.

On November 11, 1957, Poth was notified "that his position was being transferred with all its duties" to Lima, Ohio (within the same seniority district). Poth declined to transfer with his position. Effective November 15, 1957 Clerical Position K-35-D at Lima, Ohio was abolished and the duties were assigned to Clerical Position K-16-D which had been transferred from Crestline.

On December 4, 1957 Clerical Position K-16-D was advertised with location at Lima with the following primary duties:

"Mark-sense time cards, prepare employment papers for men entering and leaving service, prepare car and material reports, board bills, typing and miscellaneous office work. . . ."

The duties for the same job at Crestline were:

"Making appointments for Medical Examination, preparing RD-17's, keep medical records, typing trials and investigations (order track material), (keeping records of fuel oil, gasoline and motor oil), keep records of all cars for M. of W. load and unload freight trucks and billing of LCL freight."

The parties also jointly agree that "ordering track material, keeping record of fuel, oil, gasoline and motor oil, making car reports and MW-12 Forms, weekly and monthly reports concerning track work progress and keeping record of all cars for Maintenance of Way Department at Crestline is done by the Track Supervisor at Crestline, Ohio," however, they disagree whether this work was transferred to the Track Supervisor from the clerk's duties at Crestline, as the employees contend, or whether the Track Supervisor did this before as well as after the transfer of K-16 duties from Crestline, as contended by the Carrier.

While a comparison of the K-16 duties before and after the transfer of the position from Crestline to Lima, shows a general similarity of job con-

tent, it is evident that the duties vary substantially in detail. The employees contend, therefore, that Rule 3-C-2 was violated because the Carrier removed and reassigned to other positions not covered by the Agreement at Crestline the bulk (more than five hours a day) of the work from the K-16-D position at Crestline, then transferred the position to Lima where the Carrier abolished the K-35-D position and assigned its work to position K-16-D. The employees conclude that the Carrier violated Rule 3-C-2 because it did indirectly what it could not do directly.

We are not sure precisely what the employees think the Carrier did indirectly what it could not do directly because their position changed during the processing of the claim.

The claim states that the Carrier violated the Agreement when it reassigned certain duties of the K-16-D position at Crestline and "allegedly" transferred the position to Lima where it then abolished position K-35-D.

In discussing Rule 3-C-2, the only substantive rule pursued by the employees throughout the proceeding, the employees assert initially "that subsequent to the abolishment of position K-35-D at Lima, Ohio, the work of the abolished position which remained to be performed was not assigned in compliance with the meaning and intent of Rule 3-C-2 (a)." To this the employees added: "Position K-16-D was not abolished."

Based on this position it would seem the employees contend that the Carrier did indirectly what it could not do directly by abolishing position K-35-D and not reassigning work at Lima, as required under Rule 3-C-2. While there is evidence that the Carrier jockeyed some of the K-16-D duties to fill out an assignment at Lima, there is no evidence that the K-35-D duties were not reassigned as required by the Agreement when the position was abolished; hence, as to this contention, it does not seem the Carrier did indirectly what it could not do directly.

In the referee hearing on this case the substance of the employees' position was that the K-16-D position was abolished "in effect" at Crestline and that the remaining work there was improperly distributed in violation of Rule 3-C-2.

Aside from the fact that this new argument has no standing before this Board because it was not presented on the property, it flies in the face of the specific statement by the employees that the K-16-D position was not abolished and the statement of facts, agreed to by the employees, that the position was transferred to Lima. As to this argument, therefore, it does not seem the employees have made a case that the Carrier violated Rule 3-C-2 by doing indirectly what it could not do directly.

It may be, as the employees charge, that the Carrier "manuevered" in such a way as to take advantage of existing rules to do indirectly what they could not do directly. Our duty, however, is to interpret those rules as they apply to the claim and determine if the employees have met their burden to show how those rules were violated. In Awards 12108 (Seff), 12420 (Coburn) and 12809 (Dolnick), involving very similar circumstances, the Board did not think that the burden had been met. We do not think it was met here.

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 Agreement 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 23rd day of November 1964.