# Award No. 13178
# Docket No. CL-13470

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**John H. Dorsey, 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-5170) 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-Time Keeping, Symbol No. E-102, rate of pay $420.87 a month, located at Wilmington Shops, Wilmington, Delaware, Chesapeake Region, effective August 19, 1960.

(b) The position should be restored in order to terminate this claim and that R. McKinley, all Extra Clerks at the location who suffer a loss of time, and all other employes affected by the abolishment of the 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 1001.]

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

term which we (mistakenly it seems) thought to be clear. **The 'monetary loss' suffered by an employe who is deprived of an opportunity to earn money at his regular wage or salary is the amount of money he would have earned from his regular wage or salary plus such increases as may have accrued to the position during the time the employe was so held off his regular position less the amount of 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 had he not been held off his regular assignment."

It would be difficult to find any clearer expression by this Board of what they intend when they sustain a claim for "monetary loss". It certainly does not comprehend holiday pay lost or rest day pay lost or any of the other matters which are stated in the Employes' claim. The term comprehends only the difference in the wages earned and what Claimant would have earned but for Carrier's actions where such are found to be violative of the Agreement. See Second Division Award 1638, Referee Carter, and Fourth Division Award 937, Referee Carey, in support of the Carrier's position as related above.

III. **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 Employes in this matter.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to August 19, 1960 four clerical positions, covered by the Agreement, existed at Carrier's Wilmington Shops. Three of

these positions were in the Office Superintendent–Shops and one was at the Enginehouse Office, the latter being 650 yards distant from the Office Superintendent–Shops.

Effective August 19, 1960 one of the clerical positions at the Office Superintendent–Shops was abolished. Work remaining, of the abolished position, was assigned in part to the two remaining clerical positions in the Office Superintendent–Shops and to the clerical position at the Enginehouse Office. At issue is whether the assignment of part of the work of the abolished position to the clerical position at the Enginehouse Office violated Rule 3-C-2 (a) (1) of the Agreement.

PERTINENT RULE

The Rule which we are called upon to interpret and apply reads:

"RULE 3-C-2

(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."

CONTENTION OF PARTIES

Petitioner contends that Rule 3-C-2 (a) (1) obligates Carrier to assign work of an abolished position to remaining positions, covered by the Agreement, "at the location of the abolished position." Therefore, Carrier, in assigning part of the work of the abolished clerical position to a clerical position at another location, violated the Agreement. It cites, as in point, Award No. 5541, in which the same parties and Rule of the Agreement were involved.

Carrier contends that the Rule can be construed only as requiring it to assign the remaining work of an abolished position to a position or positions covered by the Agreement at the location where the work "is to be performed." This it did.

RESOLUTION

Petitioner says that the following language in Award No. 5541 supports its contention:

"It is urged that Rule 3-C-2 (a) (1) was violated when the work of position, Symbol F-13, was assigned to positions at Norfolk Yard and the Philadelphia Billing Bureau for the reason that these positions were not at the location of the abolished position. The rule states that the remaining work of an abolished position **may** be performed by remaining positions in existence at the location where the work of the abolished position is to be performed. We think this means that such work **may** be performed by the occupants of positions doing the same class of work at the location of the abolished position. This Division has so held on several occasions. See Awards 3583, 3877, 4044, 5436." (Emphasis ours.)

The Rule does not contain the statement attributed to it in the above quotation. But, we agree that the work "may" be assigned to a clerical position at "the location" where it was performed by the occupant of the abolished position. The word "may" is permissive; not mandatory.

The parties drafted the Rule in clear simple language. The phrase "at the location where the work of the abolished position **is to be performed**" employs the future tense. Petitioner would have us substitute "was performed" for the emphasized (our emphasis) words in the foregoing quotation. For us to do so would be tantamount to drafting a new Rule. That we have no such power has been long established. We will deny the Claim.

**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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1964.