

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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-5222) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule and Rule 3-C-2, when it abolished the Group 2 Loader position held by H. L. Kuykendall at the Freight Station, Terre Haute, Indiana, Southwestern Region, effective December 5, 1959, and assigned a part of the remaining work of the abolished position to Truck Drivers employed by the Pennsylvania Truck Lines not covered by the Clerical Rules Agreement.

(b) Claimants H. L. Kuykendall and Nathaniel Rice, and all other employees affected by the abolishment of this position should be compensated for all monetary loss sustained, commencing December 28, 1959, and continuing until the violation is corrected.

(c) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-2 and 4-F-1, when it abolished the Group 1 position of Tallyman held by G. W. Taylor at the Freight Station, Terre Haute, Indiana, Southwestern Region, effective December 5, 1959, and assigned the work of the abolished position to a newly created Group 2 position of Warehouseman at a lower rate of pay, and to Truck Drivers employed by the Pennsylvania Truck Lines in violation of the Scope Rule.

(d) The Claimant, G. W. Taylor, should be allowed eight hours' pay a day, as a penalty, retroactive ninety days from March 28, 1960, to December 28, 1959, and continuing until the violation is corrected.

(e) The positions should be restored in order to terminate this claim, and that Claimants H. L. Kuykendall, Nathaniel Rice and G. W. Taylor and all other employees affected by the abolishment of these positions should be restored to their former status (including vaca-

tions) and be compensated for any 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 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 the rule; be compensated in accordance with Rule 4-A-6 for all work performed in between the tours of duty of their former positions; 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 the time of settlement (Award 7287). (Dockets 1004-1168)

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.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees 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.

Prior to December 5, 1959, Claimant H. L. Kuykendall was the incumbent of a regular Group 2 position of Loader at the Freight Station, Terre Haute, Indiana, Southwestern Region. He had a seniority date of January 2, 1923 on the seniority roster of the Southwestern Region in Group 2.

Claimant Nathaniel Rice was the incumbent of a regular position of Janitor, Symbol T-6, Terre Haute, Indiana. He had a seniority date of April 21, 1937, on the Group 2 seniority roster.

Claimant G. W. Taylor was the incumbent of a regular Group 1 position at the Terre Haute Freight Station. He had seniority dates of October 7, 1944, in Group 1, and November 11, 1922, in Group 2.

For many years it was the practice to handle inbound and outbound LCL freight at Terre Haute, Indiana, through the Freight Station operated by the Carrier at that point. All freight passing through the Freight Station was handled to and from freight cars and over-the-road trucks and trailers by platform employees of the Carrier covered by the Clerical Rules Agreement. Immediately prior to December 5, 1959, the platform force consisted of one Group 1 Tallyman and one Group 2 Loader.

Effective with the close of business on Friday, December 4, 1959, the handling of LCL freight at the Terre Haute Freight Station Building was discontinued and the building was leased to an outside concern. Commencing Monday, December 7, 1959, the LCL freight was handled to and from box cars placed on a "Team Track" directly across the street from the Freight Station Building. A box car was placed on the team track for the purpose of storing

to disregard the Agreement between the parties thereto 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 the actions here complained of did not violate the Rules Agreement and that the Employees have presented no valid evidence to the contrary.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years it had been the practice to handle inbound and outbound LCL freight at Terre Haute, Indiana, through the Freight Station operated by Carrier at that point. All freight passing through the Freight Station was handled to and from freight cars by two platform employees of the Carrier covered by the Clerical Rules Agreement Group 1 Tallyman who did the clerical work and Group 2 Loader who did the physical work. Effective with the close of business on Friday, December 4, 1959, the handling of LCL freight at the Terre Haute Station Building was discontinued and the building leased to an outside concern. Commencing Monday, December 7, 1959, LCL freight was handled to and from boxcars placed on a "Team Track" directly across from the Freight Station building; a boxcar was placed on the Team Track for the purpose of storing equipment and supplies used in handling LCL freight, this boxcar remaining there permanently. After December 4, LCL freight consigned to various consignees in the Terre Haute area was loaded to Indianapolis, Indiana, Freight Station, at which point it was transferred to a car by clerical employees for continued movement to Terre Haute. On arrival at Terre Haute the LCL cars were placed on the Team Track each day after which the freight was handled directly from the boxcars to the Pennsylvania Track Lines motor trucks and trailers by Truck Drivers employed by the trucking company (not Carrier's employees).

Effective December 4, 1959, the two Freight Station positions were abolished. Claimant Taylor, the Tallyman whose position was abolished, was awarded a newly established Group 2 position of Warehouseman which had been advertised by bulletin November 25, 1959, effective December 7, 1959.

For the purposes of clarity, as the issues presented in the two claims are to some extent different, we will consider each of the claims separately.

Firstly, our primary consideration will be the claim presented in (a) and (b) of the Statement of Claim by H. L. Kuykendall, holder of the Group 2 Loader position. It is contended by the Claimant that for fifty years prior to December 7, 1959, all LCL freight at Terre Haute was trucked into and out of boxcars by employees covered by the clerical Agreement and that prior to December 7, 1959, Pennsylvania Truck Line drivers were not permitted to handle freight into or out of boxcars; that this work under the Scope of the Agreement was historically and traditionally by custom and practice the exclusive work of the Group 2 position of Loader; it is contended by the Petitioner that when the Carrier abolished the Group 2 Loader position held

by Claimant and assigned a part of the remaining work of the abolished position to Truck Drivers employed by the Pennsylvania Truck Lines not covered by the Clerical Rules Agreement, it violated the Agreement.

In response to Petitioner's contention it is claimed by the Carrier that in compliance to the change in the method of handling freight at Terre Haute that at the Indianapolis Freight Station all LCL freight consigned to consignees at Terre Haute was placed in boxcars and zoned by clerical employees; that none of the work belonging to the Claimant Loader remained at Terre Haute; that the work performed by the Truck Drivers at Terre Haute in removing freight from a boxcar zoned at Indianapolis by employees coming under the Clerical Agreement is no different at the boxcar on the Team Track from that previously done by these drivers at the Freight Station; that LCL freight is now picked up by the drivers from zones within the boxcars and placed in trucks and trailers and unloaded from their trucks into the boxcars for storing by the Warehouseman.

There is no denial in the record of Petitioner's assertion that for many years at Terre Haute all LCL freight was trucked into and out of boxcars by Group 2 Loaders covered by the Clerical Agreement. What we are here presented with is a change in the method of operation in the delivery of LCL freight to and from boxcars. It is recognized that whether or not the Loader position should be retained is a managerial prerogative. However, when such a position is abolished, it must be done in accordance with the requirements of the collective bargaining agreement.

Fundamentally, Carrier is relying on the principle enunciated in Award 4388 (Carter), citing Decision 209 that "The claim that trucking freight from the zone to the tailboard of the truck and from the tailboard to the zone is clerk's work under the current Agreement is denied." The facts involved in those two awards and subsequent awards citing them with approval were those pertaining to the movement of freight from a platform at a Freight Station to a truck or trailer. Carrier contends that what is presented here doesn't constitute any change in the application of the principle; that, instead of having zones on the platform that we now have them established in boxcars on the Team Track, that the truck drivers have a right to do this work and no work remains for the Loader.

It is significant that Award 4388 (Carter), also contains the following language:

"This Division seems to have determined that the checking, handling and trucking of freight into and out of a freight warehouse is within the scope of the Clerks' Agreement, and that third parties may pick up or deliver freight only upon the platforms of the warehouse, or at the door thereof where no platform exists, without infringing upon the rights of Clerks under their Agreement."

We also note the following in Carrier's submission in the record:

"However, if it were to be considered that some work did remain to be performed, it would have been work of the loader position."

It having been conceded that prior to December 7, 1959, that part of the loader position was moving LCL freight in and out of boxcars, we are of the opinion that when Carrier made this change in the method of operation as heretofore indicated some of the work of the Loader's position was

transferred to truck drivers not in the employ of the Carrier and that there has been a violation of the Scope Rule of the Agreement.

We believe that a quotation from Award 4315 (Robertson), is quite appropriate:

"We recognize that the determination of whether or not Loaders should be retained on freight gangs is a managerial prerogative. However, when such positions are abolished, it must be done in accordance with the requirements of the collective bargaining Agreement. How the Carrier removes the violation of the Agreement is a matter for its own determination. We do not direct nor have we the power to direct that Loaders be placed in freight gangs. We do believe, however, that an affirmative award is required and, hence, the claim will be sustained. In other similar situations now pending on the property and in the removal of the violation, we trust that the parties can negotiate out a reasonable solution." (See also Award 12981 (Coburn).)

Secondly, we now come to a consideration of the claim contained in (c) and (d) of the Statement of Claim, in which Claimant Taylor contends the Carrier assigned the work of the abolished Tallyman position to a newly created Group 2 position of Warehouseman at a lower rate of pay in violation of Rule 3-C-2 (d) and Rule 4-F-1 of the Clerical Agreement.

Rule 3-C-2 (d) provides that if the work of an abolished position is assigned to a Group 2 position, the rate of which is less than the rate of the position abolished, a study may be made. It doesn't appear from the record that any request was ever made by Petitioner for such a study.

Rule 4-F-1 provides as follows:

"RULE 4-F-1.

Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules, nor shall the transfer of rates from one position to another be permitted."

Claimant contends that the new position of Warehouseman covered relatively the same class of work the Tallyman had formerly been performing prior to December 7, 1959; Carrier, to the contrary, contends that Claimant is not doing relatively the same class of work as a Group 2 Warehouseman as he did as a Group 1 Tallyman.

From a reading of the record it is difficult to determine exactly what work Claimant was performing as a Group 2 Warehouseman was a duplication to any degree of the work he formerly performed as a Group 1 Tallyman. An attempt to determine this satisfactorily would be impossible; it would be a matter of speculation and conjecture. For the foregoing reason we are of the opinion that this part of the claim should be dismissed.

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 been violated.

AWARD

(a) and (b) – Claim sustained.

(c) and (d) – Claim dismissed in accordance with the opinion.

(e) – Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.