

Award No. 13455

Docket No. CL-13413

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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-5142) 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 clerical position Symbol F-102-F, at Shelbyville, Indiana, Southwestern Region, effective June 3, 1959, and assigned the remaining duties of the position to the Agent at Shelbyville and to clerical employes at the Indianapolis, Indiana Freight Station.

(b) The position be restored in order to terminate this claim and that the Claimant, H. A. Denning, and all other employes affected by the abolishment of this position should be restored to their former status (including vacations) and be allowed eight hours' pay a day, as a penalty, commencing June 3, 1959, and continuing until the violation is corrected; be compensated for any loss sustained under Rules 4-A-1 and 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, and that the total amount to be allowed in settlement of this claim be ascertained by the parties at the time of settlement (Award 7287). (Docket 861.)

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 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 as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

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 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 and 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 of the Employees in this case would require the Board 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 were an exercise of its recognized managerial right to abolish positions and rearrange work in the interest of securing a more efficient and economical operation of its business and that they were in no way violative of the Clerks' Rules Agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Organization argues in support of its claim that some duties of the abolished position were transferred to the Indianapolis Freight Station after the abolishment of the position in violation of Rule 3-C-2 (a) (1) and the remaining work was assigned to the Agent at Shelbyville in violation of Rule 3-C-2 (a) (2) because it required more than four hours per day to perform. Organization also argues in support of its claim that Carrier violated Rule 2-A-1 (d) when, prior to abolishing the position, it failed to fill the position by appointment after failing to fill it by bids on posting; Organization also notes in support of its position that Carrier has made no showing that written notice of the abolition of the position had been given to the permanent incumbent as required by Rule 3-C-1 (g). The relevance of the alleged violations of Rules 2-A-1 (d) and 3-C-1 (g) to the claim presented to us by the Organization that Carrier violated particularly the Scope Rule and Rule 3-C-2 was not made clear either on the property or in the Submission.

In its position as set forth on the property Organization said:

"The issue to be decided in this case is whether or not clerical position F-102-F . . . was properly abolished under the provisions of Rule 3-C-2, and whether or not the Scope Rule and Rule 2-A-1 were violated in connection with the abolishment of this position."

There was no mention at all of a possible violation of Rule 3-C-1 (g). Organization stated the issue differently in its Ex Parte Submission:

"The issue to be decided in the instant case is whether or not the Carrier violated the Rules Agreement . . . particularly the Scope Rule and Rules 2-A-1 and 3-C-2 when it abolished clerical position F-102-F. . . ."

The claim as filed with the Submission does not mention Rule 2-A-1 and appears to propose no remedy which would be a specific cure for violation of that rule. If Carrier had carried out the requirement of Rule 2-A-1 as the Organization reads it, an employee would have been assigned to the position. But only 3½ hours per day, according to the Carrier, was required to perform the remaining duties, the balance having been previously transferred to the Indianapolis Freight Station. We would thus be left with the identical question of proof we arrive at without considering the alleged violation of Rule 2-A-1.

Organization claims that work of the position in question was transferred to the Indianapolis Freight Station after the position was abolished and in violation, therefore, of Rule 3-C-2 (a) (1); Carrier claims that the duties taken from the position and transferred to Indianapolis were transferred months before the position was abolished. Organization claims that in any case, the time required to perform the duties remaining after the abolishment of the position exceeded four hours per day; Carrier claims, on the contrary, that they required only 3½ hours per day. It is incumbent on the Organization as the Claimant to prove the facts on which its claim is based; this they have here failed to do. They have made assertions which were challenged by the Carrier, and have complained that Carrier refused to engage in a joint investigation, but have failed to supply evidence adequate to prove the facts needed to establish their claim as a valid one. We will therefore 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 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 as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1965.