

Award No. 13480  
Docket No. CL-13681

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Daniel Kornblum, 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-5210) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-2, 4-E-2, 4-F-1 and the Scope Rule, when it abolished clerical position Symbol No. G-45, located at the Yard Office, South Akron, Ohio, Lake Region, effective September 19, 1960.

(b) The position should be restored in order to terminate this claim, and Rose Morgan, Edward Bednarik, G. R. Pifer, John Blatney, Robert Bernardinelli, Karl Logsdon, Margaret Parr, Harry Staples and all other employees affected by the abolishment of this position should be restored to their former position or 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-6 for all work performed in between the tour of duty of their former position, that the total monetary loss sustained including expenses, under this rule be ascertained jointly by the parties at time of settlement (Award 7287). (Docket 1063)

**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.

## 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:** Effective September 19, 1960, the Carrier abolished clerk's position Symbol No. G-45 at its Yard Office in South Akron, Ohio. At the same time it reshuffled and rearranged the previous tours of duty of the following clerks' positions remaining in that Office; Symbol Numbers G-47, G-51, G-58 and G-59. Before the reorganization each of these positions had straight 8 hour tours of duty with a maximum luncheon break of 20 minutes during the tour. After it, they were given 9 hour tours of duty with 1 hour for lunch. In consequence of the changes the duty times of three other clerical positions were also immediately affected: that of the Regular Relief Clerk and 2 Extra Clerks.

More importantly, the work previously assigned to the abolished position, G-45, was shifted, in the main, to positions G-51 and G-59. In turn, some of their work was transferred to one or another of the remaining clerical positions under the revised duty hours. But it is undenied that not all of the work of the abolished position could be absorbed in this fashion. Thus, despite the rearrangement of work loads there was a residue of work, primarily that of answering telephones and thereby furnishing information to the Freight Office, Patrons and others seeking shipping information, during the period from 6:00 A. M. to 9:00 A. M. These tasks were taken over or assisted in by the Yard Master. It is not denied that before the September 19th changes such telephonic work was part and parcel of the duties of the clerks assigned to the car desk, including the incumbent of abolished position G-45.

In its statement of Claim herein, as well as the Joint Submission used to progress this claim on the property, the Organization alleged only that the Carrier had violated "Rules 3-C-2, 4-E-2, 4-F-1 and the Scope Rule" of the Clerks' Agreement "when it abolished clerical position Symbol No. G-45". In its submission to this Board, however, the Organization has added an alleged violation of Rule 4-B-1 of the Agreement. We shall treat these alleged violations *seriatim*.

(1) The alleged violations of Rule 3-C-2 (a). The principal charge in this case is that the Carrier in distributing the duties remaining from abolished position G-45 violated Rule 3-C-2 (a) (1) of the Agreement. The Organization stresses particularly the improper assumption of some of those remaining duties by the Yard Master, an employee not covered by its Agreement. The counter argument of the Carrier is that the "use of a telephone does not accrue exclusively to any particular class or craft in conducting the necessary business of a Yard Office, and the Scope of the Clerks' Agreement does not provide that such work is the exclusive work of clerical employees".

Rule 3-C-2 (a) provides in relevant part:

"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.

"(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe."

The answer to this portion of the Petitioner's claim depends upon which one of the two antithetical interpretations of Rule 3-C-2 (a) the Board follows in this case. Under the one it must be shown, in all events, that the remaining work in dispute belongs exclusively to the Clerks either in terms of their Agreement or by tradition, custom and practice. e. g. Awards 12479 (West), 11963 (Christian), 11107 (McGrath), 10455 (Wilson). In the other, the application of the Rule does not depend upon any "exclusivity theory", but rather on a showing that the remaining work, as the Rule expressly provides was "previously assigned" to the abolished position. e. g. Awards 12901, 12903 (Coburn), 7287 (Rader), 4043, 4044, 4045 (Fox), 3870 (Douglas).

It would certainly seem, especially in the context of the facts of this case, that the latter interpretation of Rule 3-C-2 (a) is the sounder one. Any other construction would make, for the most part, the language of sub-paragraphs (1) and (2) sheer surplusage. For example, under sub-paragraph (2) any issue as to the amount of work remaining from an abolished clerical position and assigned to a supervisory employe would be entirely extraneous if, in the first place, it could not be shown that that work belonged exclusively to the Clerks. Moreover, the fact that there was a remaining clerical employe under sub-paragraph (1) would be utterly meaningless if it could not likewise be shown that such work was in the exclusive domain of the Clerks' Agreement.

When position G-45 was abolished there were admittedly four other regularly bulletined covered positions remaining "in existence, at the location where the work was performed". In addition there was the incumbent of a Regular Relief Clerk position and two Extra Clerks remaining, all of whose positions, by precedent decisions of this Board, come within the ambit of sub-paragraph (1) of Rule 3-C-2 (a). See Awards 13159 (Hamilton), 12823 (Yagoda), 4291 (Rader), 4045 (Fox). In these circumstances, it does not matter that the remaining clerical work from abolished position G-45 taken on by the Yardmaster was both less than 4 hours per day and incident to his duties as a Yard Master, since sub-paragraph (2) of Rule 3-C-2 (a) does not come into operation at all when there are, as here, remaining clerical positions and work which meet the conditions of sub-paragraph (1). e. g. Awards 3870 (Douglas), 3877 (Yeager), 4044, 4045 (Fox), 7287 (Rader), 12901 (Coburn).

This portion of the claim is sustained and the remedy will be considered in a later portion of this opinion so entitled.

(2) The alleged violations of Rules 3-C-2 (b) and (c). The gravamen of these portions of the claim is that some of the work remaining from the abolished position was assigned to incumbents of remaining clerical positions with going rates of pay less than that for the abolished position (Rule 3-C-2 (b) ), and without a re-study of the expanded duties of those positions (Rule 3-C-2 (c) (1) ). The Organization did not prove there was any abuse by the

Carrier of the elements of managerial discretion reserved to it under these two Rules or that it even demanded a new time study of the positions and, therefore, these portions of the claim are denied.

(3) The alleged violation of Rule 4-E-2. This aspect of the claim was, in effect, withdrawn by the Organization in its submission to this Board. Accordingly, there is nothing remaining in this connection for this Board to pass upon.

(4) The alleged violation of Rule 4-F-1. The portent of this allegation is that the radical changes in the tours of duty of the remaining clerical positions were tantamount to the creation of "new" positions which "have the effect of reducing rates of pay, etc." in violation of Rule 4-F-1. The ready answer to this allegation is that no new positions were here created merely by changes in the tours of duty and the consequent reapportionment of those duties. Moreover, changes in duty tours are expressly contemplated by Rule 3-C-1 (c) of the Agreement. This portion of the claim is accordingly denied.

(5) The added allegations as Rule 4-B-1 (a) and 4-B-1 (c). Since the Statement of Claim in this matter has never encompassed any allegation that Rules 4-B-1 (a) and 4-B-2 (c) were violated by the Carrier, it would offend the procedural rule in Circular No. 1 of the Board for it to consider it at this time. The precedents of the Board are more than ample that in such circumstances the untimely effort to expand the claim is not permitted. e. g. Awards 6954 (Coffey), 8426 (Lynch), 10416 (Sheridan), 11006 (Boyd), 12178 (Stack) and many others. No consideration will be given, therefore, to the belated allegations of violations of Rule 4-B-1 (a) and 4-B-1 (c).

#### Remedy

In light of the finding herein above that the Carrier has violated Rule 3-C-2 (a) (1) of the Clerks' Agreement, the Board rules that the Carrier shall pay to each of the named Claimants such amounts as will make them whole for any loss of wages, if any, they may have suffered by reason only of the violation of said Rule. In all other respects the claim is hereby denied.

**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 Rule 3-C-2 (a) (1) of the Agreement was violated.

#### AWARD

The claim is sustained to the limited extent described in the Opinion herewith and in all other respect is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1965.