

Award No. 13641
Docket No. CL-13935

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, 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-5289) that:

(a) The Carrier violated the Rules Agreement, particularly Rule 3-C-2, when it abolished positions of Yard Clerk, Symbol No. G-65, incumbent Harry Felton, G-31, incumbent C. F. Locke, and Relief Clerical position, no symbol number, incumbent J. L. Maher, located at Cherry Street, New Castle, Pennsylvania, Lake Region, effective 12:01 A. M., February 15, 1961.

(b) That incumbents of abolished positions, H. F. Felton and J. L. Maher, and Extra Clerks, C. R. McCullough, Olga Gabriel, A. E. Brooks, J. E. Anderson, W. E. Curtain, and all other employees affected 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 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; 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 1073)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives 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.

to the Agreement. The Board has no jurisdiction or authority to take any 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: Prior to March 1958 there were four Crew Dispatcher positions at the Mahoningtown Enginehouse, Cherry Street, New Castle, Pennsylvania. All of these positions were covered by the Clerks' Agreement. One Crew Dispatcher position was assigned on each of the three tricks, while a Relief position made it possible to have seven day Crew Dispatcher coverage on all three tricks.

In March 1958 Carrier abolished the first trick Crew Dispatcher position, after concluding there was insufficient work to keep the incumbent of the position busy for a full tour of duty. The remaining duties of this Crew Dispatcher position were assigned to a first trick Clerk position in the office of the Assistant Trainmaster and the Assistant Road Foreman of Engines. The incumbent of the latter position, Symbol No. G-21, continued to perform crew dispatching work on the first trick until the Carrier action which gave rise to the present claim.

Effective February 15, 1961 Carrier transferred the Cherry Street Crew Board from New Castle, Pennsylvania to Haselton Yard at Youngstown, Ohio, to be maintained by Crew Dispatcher at the latter location. The Haselton Yard Crew Dispatchers also are covered by the Clerks' Agreement. Youngstown and New Castle are approximately fifteen miles apart in the same seniority district. Also effective February 15, 1961 the second and third trick Crew Dispatcher positions at Cherry Street, and the above-noted Relief position, were abolished. However, the first trick clerical position (G-21) was continued at Cherry Street. The Carrier's action in abolishing the three Crew Dispatcher positions at Cherry Street, and in reassigning the remaining work of these positions, precipitated the present claim. Carrier states the reason for the disputed action was a further decline in the volume of work available for the Crew Dispatchers at Cherry Street.

Rule 3-C-2 of the controlling Agreement contemplates that positions may be abolished by the Carrier and no other Agreement provision bars such action. Thus the question in this case is not whether the Carrier had the right to abolish the subject positions. Rather, it is whether the assignment of the remaining work of these positions in any way violated the terms of the Agreement.

No Agreement violation occurred when Carrier transferred to Crew Dispatchers at Haselton Yard, Youngstown, the maintenance of the crew board formerly maintained by Crew Dispatchers located at Cherry Street in New Castle. As already noted, this work remained in the same seniority district and under the coverage of the Clerks' Agreement. We have held in prior awards, involving the same parties, that Rule 3-C-2 (a) (1) does not

bar the Carrier from assigning the work of an abolished position to a clerical position at another location in the same seniority district. The contract language speaks of assigning the work of the abolished position to another position or other positions remaining in existence at the location "where the work of the abolished position is to be performed," not "was performed." (Awards 13178, 13463, 13479).

There was no violation of the Agreement when the Carrier remained at Cherry Street some of the work of the abolished positions and assigned it to clerical position Symbol No. G-21 on the first trick. The Petitioner contends this first trick clerical position was unable to handle all the work of the abolished positions which continued to be performed at Cherry Street, and that the "excess" work must have been handled by the use of a greater number of Extra Clerk positions than Carrier was permitted to create at this location under the applicable Extra List Agreement No. 1 (j). However, Petitioner does not offer proof concerning the work performed by these Extra Clerks. In the absence of such proof, it is unnecessary for us to consider whether it was permissible for Carrier to assign some of the remaining work of the abolished positions to more Extra Clerks than permitted by the cited Extra List Agreement.

Petitioner further contends that messenger service formerly performed by the incumbents of the abolished positions was improperly removed from coverage of the basic Agreement and is now performed by taxi cab. Carrier denies that this messenger service was ever part of a clerical assignment at New Castle. Since the Petitioner has not offered proof concerning performance of the claimed messenger service by incumbents of the abolished positions, its contention in this respect must be rejected.

Finally, Petitioner asserts that Carrier violated the Clerks' Agreement by directing the train and engine crews to telephone the Yardmaster to report their mark-off time, and by instructing the Yardmaster to relay this information by telephone to Crew Dispatchers at Youngstown. Prior to February 15, 1961 the mark-off time of all crews at Cherry Street was reported to Cherry Street Crew Dispatchers. Thus it is urged by Petitioner that work of the abolished positions was wrongly transferred to the Yardmaster, who is not covered by the Clerks' Agreement.

The record discloses that for a period of approximately two days following the abolition of the three Crew Dispatcher positions at Cherry Street, the Yardmaster received and relayed mark-off time information as described above. Thereafter, a satellite telephone was installed at Cherry Street to enable train and engine crews to telephone their mark-off time direct to the Crew Dispatchers at Youngstown.

The procedure whereby the subject train and engine crews report their mark-off time direct to a Crew Dispatcher at Youngstown, via satellite telephone, does not constitute a violation of the Clerks' Agreement. The use of the Yardmaster to handle the receipt and relay of this information for a brief period does constitute such a violation, however. The receipt of this information was one of the regular duties of the abolished Crew Dispatcher positions at Cherry Street. It appears that until the satellite telephone was installed at Cherry Street the recording of mark-off time for the involved train and engine crews could be handled expeditiously only by use of the services of the Yardmaster. The claim will be sustained to the extent of reimbursement for earnings lost by the incumbents of the abolished positions at Cherry Street, New Castle, during the period that the Yardmaster handled

train and engine crew mark-off time as above described. The claim will be denied in all other respects.

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 violated the Agreement in part.

AWARD

Claim sustained in part and denied in part as stated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1965.