



Award No. 18474

Docket No. CL-18925

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Protective Committee of the Brotherhood (GL-6849) that the Carrier violated the Rules Agreement when it arbitrarily, unilaterally and capriciously abolished the position of Mail Clerk in the Maintenance of Equipment Department, Hagerstown, Maryland, on February 21, 1969 and without negotiation, reassigned the remaining work to be performed and that,

1. Clerks D. L. Baker, L. H. Rowland, D. N. Burger, H. W. Sowers, C. C. Ditto, Jr., L. E. Henesy, R. E. Shirk, M. Small, A. G. Fouche and C. L. Kunkleman, shall now be allowed eight (8) hours at the time and one-half rate each for the dates of February 24, 25, 26, 27, 28, March 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15 and all subsequent dates until the provisions of the Rules Agreement.

EMPLOYEES' STATEMENT OF FACTS: On or about February 21, 1969 the Carrier abolished the position of Mail Clerk in the Maintenance of Equipment Department, Hagerstown, Maryland. The function of this job was to handle mail on an intra-departmental basis. The position of Mail Clerk at the time it was abolished was among the lowest rated positions in the Chief Mechanical Officer's office.

Prior to the abolishment of the position, the Master Mechanic of the System, Mr. Ralph B. Martin, in letter to the General Chairman, dated February 14, 1969 (see Employees' Exhibit A) apprised him of the procedures that were going to be followed in the arbitrary reassignment of the abolished Mail Clerk job which remained to be performed. It is to be noted therein that Martin requested of the General Chairman to please let him know if there were any violations of the working agreement.

General Chairman Fouche responded in letter to Master Mechanic Martin dated February 18, 1969 (see Employees' Exhibit B) and indicated there were several violations and desired to meet with him.

Meeting was held on February 20, 1969 in Martin's office with Local Chairman Baker and General Chairman Fouche representing the Brotherhood and

2. Mr. D. L. Baker will take Company car at 7:00 A. M. each morning, go to station only — upstairs for ST-1 and baggage room for regular mail (MofE, Stores, Claims, Lab) — bring mail out and place on mail desk in main office building.

3. Miss Rowland will sort mail — she is not to make any distribution — each office representative is to pick up his own mail off of sorting desk.

4. At 1:00 P. M., Mr. Baker will take mail to station and laboratory, and bring afternoon mail back with Company car.

5. Mr. Brewbaker will line up one of his clerks in Diesel Office to go to Car Foreman's office and bring his and their mail over to this office twice daily, about 11:00 A. M., and 3:00 P. M. or 3:15 P. M.

6. Each office representative will place his mail in envelopes and place on mail desk to go out. Inter-office mail will be distributed by a clerk from respective offices.

7. At 4:30 P. M., Mr. Small will pick up mail off of mail desk and take to station in Company car, returning Company car to the main office before his quitting time.

/s/ R. B. Martin"

When the position of Mail Clerk was abolished, a mail rack was installed in the general office. This rack is about five feet long and contains two rows of pigeon holes (10), and a bin on the bottom for receipt of outgoing mail. A photograph of the mail rack is attached as Carrier's Exhibit A. A regularly assigned clerk picks up the mail at the mail room and brings it to the office. At that point the mail is sorted by another clerk to the appropriate boxes in the rack and a clerk from each of the offices then comes to the mail room and picks up mail for his particular office. A clerk also brings his outgoing mail to the office and deposits it in the outgoing bin. The outgoing mail is then put in a sack and taken to the general mail room. Subsequently, it was determined that the 7:00 A. M. pick up was unnecessary, and it was eliminated, and later the 4:30 P. M. delivery was discontinued. A pick up and delivery of mail is now made at 1:00 P. M.

There are 20 clerical employees in the Maintenance of Equipment Department at Hegerstown, and claim is filed in behalf of ten of them for an additional day's pay at time and one-half rate for each day, allegedly for being required to pick up and deliver mail at the mail room, or for getting and delivering their own mail in the mail rack in the office.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier abolished the position of Mail Clerk and reassigned the duties of that position to other clerks in the Maintenance of Equipment Department by specific instructions issued February 11, 1969. There are some 20 clerical employees in the department; the claim is filed on behalf of ten employees so classified.

There is no dispute as to the Carrier's right to abandon the position under Rule 18 of the Agreement and all procedural requirements were met. While the Organization contends that the reassignment of work should have been "negotiated" to reach mutual agreement on the reassignment, Rule 19 clearly sets forth the guidelines for the Carrier to follow which, of course, were the result of collective bargaining in framing the language of the Agreement itself.

While a meeting between the parties was held on the property following notice of the job abandonment, with no agreement reached, this did not constitute an acknowledgment by the Carrier of an obligation to "negotiate" as alleged in the Claim.

The issue here is whether the Carrier complied with Rule 19 "Assignment of Work," and specifically part (c) of that Rule which reads:

"(c) Where the remaining work of an abolished position is reassigned to positions coming within this Agreement, an effort will be made, where practicable, to reassign the work to a position or positions assigned similar work, higher rated work to higher rated positions and lower rated work to lower rated positions."

To place the matter in perspective it should be noted that a joint analysis of the work of mail handling conducted on April 4, 1969 revealed that a total of two hours and 23 minutes was spent on this work by Claimant Clerks on this date. There does not appear on the record a valid contention by the Petitioner that the performance of such duties was burdensome, onerous, or that it imposed an excessive workload on any one or more of the clerks involved.

The issue therefore turns on a determination of whether or not the Carrier acted properly in assigning the work of mail handling to employees classified as Clerks who were in a group separated under the Agreement and in a higher rated classification than that of the abandoned position. While the record indicates disagreement between the parties as to the exact group to which the Mail Clerk and Clerks were assigned, it is the judgment of the Board that the Agreement, itself, is clear on this point, if indeed it is material to its decision.

The Petitioner contends that the Agreement "required" the assignment of the duties of the abandoned position to lower rated positions and urges that such did exist in the department in the job of Janitor. The Carrier replies that, in its judgment, it was "not feasible or practical" to assign mail handling work to the Janitor, and further, that the Mail Clerk was the lowest rated position in the office and that ". . . it was impossible to reassign the work to a lower rated job."

The language of Rule 19 instructs the Carrier to reassign the work of an abolished position with certain positive restrictions. However, part (c) of the Rule, here at issue, permits the exercise of judgment through the use of the phrase, "wherever practicable." Obviously, this latitude negotiated by the parties had some meaning in the history of bargaining and has substantial force and effect in the Board's consideration of the instant dispute.

Review of the Agreement, the record before us, and arguments of the parties brings us to the conclusion that the Carrier did not abuse nor exceed the discretionary powers granted and finds that its action had contractual sanction.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1971.