



Award No. 5018

Docket No. 4851

2-PULL-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That at San Antonio, Texas, the Pullman Company violated the current agreement when they abolished Position MP 32 with regular bulletined hours of 7:30 A. M. to 11:30 A. M. and 12:00 Noon to 4:00 P. M. on Tuesday, Wednesday, Thursday, Friday and Saturday with Sunday and Monday as relief days, which position was held by car cleaner Willie F. Cantu, and then established position MP 45 to perform the same duties with hours of 8:30 A. M. to 11:30 A. M. and 12 Noon to 3:00 P. M. seven days per week with no relief days.

2. That Position No. MP 32 be reestablished.

3. That Willie F. Cantu be compensated at the pro rata rate for all time that he is prevented from working the hours of 7:30 A. M. to 11:30 A. M. and 12:00 Noon to 4:00 P. M. on each Tuesday, Wednesday, Thursday, Friday and Saturday; and at the time and one-half rate of pay for all services performed outside of these hours and on his relief days Sunday and Monday from April 7, 1964 until this violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the carrier, maintains an agency at San Antonio, Texas, where Mr. Willie F. Cantu, hereinafter referred to as the claimant, is employed as a car cleaner.

Position No. MP 32 was established January 11, 1962, and occupied by the claimant at the carrier's agency at San Antonio, Texas. This position was for 8 hours a day — 5 days a week with the following work schedule:

MP 32 — 7:30 to 11:30 A. M. — 12:00 Noon to 4:00 P. M., Tuesday through Saturday. On April 7, 1962, the carrier abolished the above position and established position No. MP 45 with the following work schedule:

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On April 14, 1962, Claimant's regular five-day assignment as car cleaner was abolished because his necessary work was reduced to only forty-five minutes per day, and a new seven-day, six-hour assignment was established in its place. This was done pursuant to Rule 1 and the Exception, which provide that bulletined hours of service for employes in districts and agencies shall be eight consecutive hours per day, five days per week, except that at one-man point where the service of an employe is not regularly required for a full eight hours daily, scheduled work periods shall be established and bulletined to conform to the requirements of service.

Claimant bid in the new job, and over two years later, on June 5, 1964, filed this claim "for all hours prevented from working" on his former five-day shift, and also for overtime pay on Sundays and Mondays, his former rest days "from April 14, 1962 * * *. At this time mentioned above, I was changed from 8 hours of work per day to 6 hours per day, 7 days a week * * *".

The claim was denied on the grounds that the change complained of was made pursuant to the exception to Rule 1, and that the claim was too late, not having been filed "within sixty calendar days from date of alleged unjust treatment or alleged rule violation" as provided by Rule 34.

As filed here the claim is:

"1. That * * * the Pullman Company violated the current agreement when they abolished position MP 32 * * * and then established position MP 45 * * *.

2. That position No. MP 32 be reestablished.

3. That Willie F. Cantu be compensated * * * for all time that he is prevented from working "the hours of position MP 32, and for all services performed outside of these hours and on his relief days * * *."

The only acts complained of are stated in Claim 1; they occurred on April 14, 1962; the remedies sought in Claims 2 and 3 and (2) that the position abolished on April 7, 1962 be re-established, and (3) that Claimant be paid as he would have been if that position had not been abolished and he had been required to work outside of its regular hours.

This is clearly not a statement of a continuing claim, but of a claim for a definite violation occurring on April 14, 1962.

But the Employees contend that the action complained of is a continuing violation, and that the claim is good for a period dating back to sixty days before the date it was presented.

No awards are cited in support of that contention. On the contrary, awards of this and the Third Division of the Board have repeatedly held that it is not a continuing violation when the occurrence complained of is the abolishment of a position or the establishment of another. Thus, in Award No. 4248 this Division said:

"Whatever rights the claimants may have had became determinable and fixed when the positions they occupied were discontinued.
* * * The claim was not a continuing one."

In Award No. 4783 this Division said:

"The act of bulletining a vacancy is fully concluded when the bulletin is published. If such bulletin is violative of some requirement of the agreement it is a concluded violation and there is no continuing violation to support a claim based upon the inadequacy of the bulletin."

The same is of course true of the abolishment and rebulletining of a job. See also Awards Nos. 3594, 3627 and 4187; and Third Division Awards Nos. 9686, 10532, 11167, 12045, 12984 and 14131.

In the above Award No. 11167, the Third Division said:

"* * * we conclude that the claim is not a continuous one, it is based upon a specific act which occurred on a specific date, namely May 5, 1957. * * * this does not create a continuing claim."

Here the one question presented by the claim is whether the Carrier violated the Agreement on April 14, 1962, by abolishing Claimant's old position and establishing a new one, which the Claimant then bid for, received, and occupied for over two years before he made a claim of violation.

The claim not having been filed within the sixty days time limit set by the parties by Rule 34, neither the officers of the Carrier nor this Board can have any jurisdiction to consider or sustain it, regardless of the merits.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1967.

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