NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of Allen F. Grosgebauer, dated April 11, 1934, that the position of caller at Mandan, N. D., was improperly abolished, and that he be paid for time lost on April 9, 10, 11, 12, 13, and 14, 1934, based on Rules 1, 11, 71, 78, and 88 of Clerks' Schedule."

STATEMENT OF FACTS.—The parties jointly certified the following:

"*The position of train and engine crew caller, hours of service 4:00* p. m. to 1:00 a. m., at Mandan, was abolished as a regular position effective April 9, 1934. Mr. Grosgebauer occupied this position prior to its discontinuance. On April 15th Mr. Grosgebauer exercised his seniority over a junior employe. Subsequent to the date that the position was abolished, work on the position was performed when needed, by extra employes."

There is in evidence an agreement between the parties bearing effective date of August 15, 1922, and the following rules thereof are cited:

"SCOPE—EMPLOYES AFFECTED—RULE 1. These rules shall govern the hours of service and working conditions of the following employes subject to exceptions noted below:

"(1) Clerks—

"(a) Clerical workers.

"(b) Machine operators.

"(2) Other office and station employes—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, storehouses and warehouses.

"* * * *."

"BULLETIN—RULE 11. New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employes affected, for a period of five (5) days in the districts where they occur; bulletin to show location, title, hours of service, and rate of pay. Employes desiring such positions will file their applications with the designated official within that time, and an assignment will be made within five (5) days thereafter; except that in the general offices at Saint Paul and Seattle positions will be bulletined for a period of three (3) days and an assignment will be made within three (3) days thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined.

"The provisions of this rule shall apply to all positions or vacancies except that of truckers and similarly rated or lower positions, provided however, the senior employe in this class of service will be given an oppor-

In Award No. 289, Docket CL-322, National Railroad Adjustment Board, Third Division, the neutral referee made the following observations: "On the basis of both common sense and past decisions there can be no question of a Carrier's right to make bona fide abolitions of positions when because of the small amount of work to be done he needs to reduce his force."

We do not question the right of the carrier to abolish a position when the work no longer exists, but we submit that in the instance at hand the work still existed. The record of crews called, cited herein, shows that for the first eight days an average of 3¾ crews were called, while for the subsequent thirteen days the average was $3^{10}/_{13}$, practically the same average number of crews used both before and after the discontinuance of the position.

POSITION OF CARRIER.—Mandan is a main line division terminal and the business handled through that point is dependent upon the movement of freight over the Northern Pacific, which business is seasonal. Mandan is also the main line connection of the Mandan North Line on which branch are located a number of large mines producing lignite coal. This coal is moved into Mandan and distributed from there. It is not stored for long periods, and the movement of it reaches its peak during the periods of consumption. There is of necessity a fluctuation in forces in the Mandan yard to conform with the fluctuation of business.

A simple statement of what was done is that as business tapered off the force was reduced, and extra men were employed when needed; as business increased extra men were employed until there was a justification for regular assignments. In other words, the same procedure was followed during rises and falls in business. This is certainly the proper way to keep pace with ebbs and flows of business. The employes are contending that when forces are reduced, there must be a complete discontinuance of service on the position that is abolished. If this is so, then the carrier may not employ extra men when forces are increased, but must immediately establish full-time positions, whether they are needed or not.

What was done at Mandan insofar as callers are concerned was a continuation of a method of adjusting forces that has been in vogue on this railway since it began operation. This practice was in effect when the current Clerks' Schedule became effective and has been continued since that time. After more than twelve years during which time this practice has been in general effect on this railway under the current agreement without protest and with the concurrence of the employes, the railway company is presented with a claim that what was done at Mandan is not in conformity with schedule rules. The employes are now attempting to secure an interpretation and application of schedule rules which is contrary to the interpretation and application of those rules which have been concurred in by the employes during the entire time the current schedule has been in effect.

With respect to Rule 11, this is the bulletin rule. Extra service which is performed intermittently is not bulletined as it is governed by the provisions of Rule 14. Rule 71 does not guarantee all employes working on a daily basis of pay that they shall be paid a minimum of the working days of the month. This rule applies only where employes occupying positions that are assigned to perform service during the full number of working days in the month.

There is nothing in Rule 78 that will guarantee to an extra employe the full measure of wages that he would receive if he filled a full-time position. A new position was not created under a different title, and Rule 88 does not apply. The extra work was performed by employes carrying the title of callers who were paid the proper rate of such position.

Rule 20 recognizes that there will be reductions in force and makes provision for the return to service of employes affected by force reduction. There was a force reduction at Mandan when the full-time position of caller was discontinued effective April 9, 1934. Rule 26 recognizes that positions will be abolished and makes provision for employes to exercise their seniority in displacing junior employes. Mr. Grosgebauer availed himself of the provisions of Rule 26 and exercised his seniority over a junior employe at another point.

OPINION OF BOARD.—This claim of Allen F. Grosgebauer, dated April 11, 1934, is based on the abolishing by the carrier, on April 9, 1934, of a position as caller at Mandan, N. D., and the fact that subsequent to the date that the position was abolished, work on the same position continued to be done when necessary by the assignment of extra employes by the carrier. Mr. Grosgebauer asks that he be paid for time alleged to have been lost from April 9 to 14, 1934, inclusive, following which Mr. Grosgebauer secured another position.

The employes base their claim on the application of Rules 1, 11, 71, 78, and 88 of the Agreement between the Northern Pacific Railway Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

The carrier contends it has a right to abolish positions under the conditions evidenced in this claim and have cited several decisions rendered in other awards as bearing upon the issue presented and particularly an award recently rendered in Docket CL-408 of this Third Division. In the claim made, for which award in Docket CL-408 was rendered, there was intermittent work required by the carrier following the displacement of the employe who had secured the position involved through the exercise of his seniority rights when the position was bulletined by the carrier. That award, however, was not rendered on and did not determine or set any precedent with respect to intermittent work. The case on which the claim was based was on a position that had been bulletined as a temporary one, with an assignment of six days per week, and according to the rules its discontinuance was to be handled in a manner specified in the rules of the Agreement. The award, therefore, was rendered upon the violation of a rule which continued a position until certain requirements had been fulfilled.

Another instance might well be cited in which an award has been rendered covering a position that had been negotiated into the schedule between the carrier and the employes and which had been discontinued by action of the carrier and consolidated into another position without much, if any, change being made in the work or the assignment.

These cases, however, while bearing some analogy to the present instance are dissimilar in many respects and emphasize the statements previously made before this Division "that each case should be decided upon its merits and without regard to the conditions at other points."

In this instant case, in which the claim is made that work continued to be done on a position after such position had been abolished, various rules of the Agreement between the carrier and the employes have been cited in support of the respective contentions of the parties. No direct violation of these rules can be charged, however, and the question at issue resolves itself into one of whether or not the conditions of these rules were unduly strained in an effort to help the economic operation of the yard office in which the action took place.

In creating or abolishing positions such as or similar to that described in this claim, various factors must be taken into consideration, one of which is the protection or promotion of the economic operation and interests of the carrier, and the other the protection and promotion of the interests and employment of the employes. The Board does not agree with the employes "that the discontinuance of a regularly assigned six day position and substitution therefor of intermittent use of an extra employe is improper," provided it can be shown by the carrier that in abolishing an established position it is neither evading the application of an established rule, or taking an undue advantage of the employe by discontinuing positions when there is a real necessity for their continuance. Neither can the Board agree that, under the application of the agreement between the employes and the carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full-time assignments, would do away with the necessity for or use of extra employes, and would be against the economic operation of the carriers and opposed to the best interests of the carriers, the employes, and the public. In the opinion of the Board a carrier is justified in abolishing a regular full time position or positions and of substituting extra employes to carry on intermittent work of the same class, when and only when the duties of the position fall off to such an extent as to leave nothing for the employe to do during the majority of hours or days of his employment and for a reasonably sustained period. In the application of this opinion the fact should be understood that, where there is a preponderance of hours or days where the service of a full time employe is required and can be utilized, the carriers would not be justified in abolishing the established position and replacing it with extra service. Neither would it be expected to apply such action to what might be termed "border line cases," or to cases where the work continued on an approximate daily basis or part thereof with only a fraction less than a majority of full time days or hours, and where a reasonable certainty might exist for an increased service within a more or less limited period. These conditions should be applied by the carrier only where the work or service required from the employe has been reduced to an appreciable extent, and where

by the evidence of a sustained reduction in the work the continuance of the position would not be justified in economical operation. Then and then only is the abolishment of a position justified and the substitution of extra assignments for intermittent work a proper procedure.

In all of these cases, however, the rules in the Agreements between the carriers and the employes must be equitably applied as a means of mutual protection, confidence, and understanding. As these conditions apply to this instant case, the practice indicated is one that has been an uncontested custom over a period of years and this cannot be disregarded. Beyond this the seasonal fluctuation of the business handled indicates a gradual diminishing of service requirements until the position has been abolished and extra helpers have been assigned as required as a matter of justifiable economic operation, with a later increase in service until the position has again been reestablished by bulletin in accordance with the Agreement.

That the service rendered from April 8 to April 14, 1934, justified the action of the carrier is evidenced by the fact that out of that period extra callers were employed only on the 10th and 12th, or two days out of the seven; while out of the twenty-two days during the month, from the 8th to the 30th, inclusive, extra employes were called for only nine days.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 evidence does not sustain the claim of the employes.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1937.