Award No. 3686

Docket No. SG-3656

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that the Carrier violated the current agreement with its Telegraph and Signal Department Employes when it improperly abolished a position of Foreman T. & S., Atlantic Division, at Camden, New Jersey on June 26, 1944.

(b) Claim that this position of Foreman T. & S. at Camden, N. J. be restored and that it be bulletined and awarded as provided in the agreement.

(c) Claim that the successful applicant to this position of Foreman T. & S. at Camden, N. J. be paid the foreman's prevailing rates, less such amounts the successful applicant earned during his regularly assigned hours of employment since June 26, 1944.

EMPLOYES' STATEMENT OF FACTS: An agreement governing rates of pay and working conditions between the Pennsylvania Railroad Company, the Long Island Rail Road Company, and the Baltimore and Eastern Railroad Company and its Telegraph and Signal Department Employes on these properties is in effect between the parties to this dispute and bears an effective date of June 1, 1943. This agreement enumerates and shows the location and rate of pay of the foreman's position involved in this dispute.

Effective as of June 26, 1944, the position of Foreman T. & S., Camden, N. J., Atlantic Division, held by J. A. Boyle, was abolished. No advance notice was given to the incumbent or other employes of the seniority district where this position existed. The notice abolishing this position was issued by the Carrier on July 17, 1944 (twenty-two days after the position was abolished). The bulletin designated as No. 96 reads as follows:

"THE PENNSYLVANIA RAILROAD

Eastern Region **Atlantic Division**

BULLETIN No. 96

TO EMPLOYES CONCERNED:

The following positions as advertised in Bulletin No. 94 dated May 31, 1944 in accordance with Telegraph & Signal Dept. Employes Agreement have been awarded as follows:

Vacancy No. 93	A. E. Saul (assigned)
Vacancy No. 94	H. Schneider (assigned)

Boyle was transferred to another Division since the position was abolished as of the same day. There would have been no purpose in advertising a vacancy which did not exist.

Therefore, the Carrier respectfully submits that, since the position in question was properly abolished and the duties thereof transferred to another position of Foreman, no violation of the Agreement occurred. Consequently, the claim of the Employes in this case should be denied.

III. **Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Acordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the Agreement, the position of Foreman was properly abolished and the unnamed Claimant is not entitled to the compensation he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

(Exhibits are not reproduced.)

OPINION OF BOARD: *This claim involves the question of whether* or not the Carrier improperly abolished one of the two positions of T. & S. Foreman at Camden, New Jersey, in the Atlantic Division. The position was abolished as of June 26, 1944, by bulletin dated July 17, 1944. Immediately prior to the position being abolished it was held by J. A. Boyle who had been assigned thereto on June 1, 1941. Boyle became Signal Inspector at Downington, Pennsylvania.

The Agreement of the parties, effective as of June 1, 1943, under "Rates of Pay", Article 5, Section 1(d), provides in part:

> "Division—Atlantic; Location—Camden;
> Position—(2) Foreman T. & S.; Monthly Rate $286.35."

It further provides in Article 9 thereof as follows:

> "This Agreement shall be effective from June 1, 1943, and shall remain in full force and effect until revised in accordance with the procedure prescribed by the Railway Labor Act, as amended."

The Brotherhood contends that these Foreman positions were established by Agreement and as long as any part of their duties remain, it is a violation of the Agreement to abolish them without negotiation.

Those awards cited, such as 21, 385, 553, 637, wherein it has been held or stated that when positions are abolished or forces reduced any work re-

maining in connection therewith cannot be assigned to employes not covered by the Agreement, are not applicable here as the record does not disclose the Carrier assigned any work outside of the employes covered by the Agreement.

Nor are those awards cited, such as 231, 368, 553, wherein it has been held or stated that the Carrier has a right to abolish positions included in agreements when there is no longer work to be performed, applicable, as that is not the factual situation here.

We find the record sustains the following statement of the Carrier:

> "The Carrier's reason for abolishing the position was that the number of men to be supervised in the gang had been gradually reduced to a point where there were only two men remaining and it was possible, under the circumstances, to assign the remaining duties of the position to another Foreman located at Camden. There can be no question as to the actual abolishment of the position because the duties which remained were assigned to another Foreman of the Telegraph and Signal Department by the consolidation of the two gangs."

The abolishing of the position was brought about by assigning the remaining duties of the position to that of the other Foreman.

The question here, under comparable language and a like situation, has been passed upon by the Board in Award 1296 in accordance with the Brotherhood's contention. Although that Award was by a divided Board, the Opinion finds support in some of the Awards therein cited. Therein the Board stated:

> "When an agreement lists the positions together with the rates of pay attached to these positions, and then provides that these rates of pay shall continue until changed by certain procedure, we are of the opinion that it is as much of a violation of the agreement to abolish the position when the work remains and assign the work to someone else without following the specified procedure as it would be to change the rate of pay in an unauthorized manner."

Interpretation of language used and the construction of Agreements using such language will always be a matter upon which men will differ. The usefulness of Awards of this Board in that regard will be greatly enhanced if they be consistent, for then both the representatives of employes and the carriers can be thereby guided in negotiating and drafting their agreements. That is particularly true here where the effective agreement was drawn up some two and one-half years after the award was rendered. That there can be a difference of opinion as to what should be the construction of that part of the agreement here involved is understandable but to now divert from a construction thereof which has been this Board's ruling for over six years would serve no useful purpose and probably lead to confusion. As long as the parties had available a ruling by which they could measure what the language they used would accomplish, they have no reason now to complain that it is again so construed.

We find that the claim should be sustained.

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 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 the Carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1947.

DISSENT TO AWARD 3686, DOCKET SG-3656

This Award gives improper interpretation of the Agreement, misapprehension of prior awards of this Division and impossibility of practical application within the intent and meaning of the terms of the Agreement.

Its error arises from an assumption that after the abolishment of the involved Foremen's position there remained to be performed work, evidenced, as explained by the Referee making this Award, by its existence in performance by the one remaining gang under Foreman H. E. Johnson, notwithstanding that the unquestioned record was that no work nor any duties connected therewith were continued by any Foreman or other employes at Cooper Interlocking where the abolished gang had previously been employed, nor was any work of the character involved being done at any point on the district—not even by the force under Foreman Johnson, so far as the record disclosed.

The Opinion cites certain former Awards by the Division, unreasonably discarding them as inapplicable, and quotes from one of them, Award No. 1296, as a support of the instant decision. The quotation from that Award No. 1296 within itself condemns the reliance upon it to be in error, for there it was but held to be "a violation of the Agreement to abolish the position when the work remains." Error in this decision lies in the declination to recognize the real and practical identification of work that has been discontinued and of work that remains as such work has been referred to and dealt with in Award No. 1296 and the others considered in this case.

Awards 231, 368, 385, 553, and 637 are cited in the Opinion; four of them are discarded as being not applicable because (1) "the record does not disclose the Carrier assigned any work outside of the employes covered by the Agreement," and (2) that in respect to three of these awards, "wherein it had been held or stated that the Carrier has a right to abolish positions included in agreements when there is no longer work to be performed," they were not applicable "as that was not the factual situation here."

Those conclusions as to the inapplicability of those previous awards fall short of giving them their due weight in identification of work discontinued or allegedly discontinued as variously it was dealt with therein. Those previous awards denying claims recognized the right of carriers to abolish positions included in agreements when there was no longer work to be performed in those positions both when the work had disappeared and when it had been removed to other locations and was performed by other employes under the same agreements entitled to perform it. Previous awards sustaining the claims contrarily found the facts not to support the alleged disappearance of the work or its removal to other location with performance by employes under the same agreements entitled to perform it.

Those previous awards, whether denying or sustaining the claims, directly and impliedly recognized the disappearance of the work and its removal to other location for performance by other employes under the agreement entitled thereby to its performance to be proper cause for abolishment of positions listed in the agreements.

Award No. 368 was a case similar to the instant one in respect to the circumstance of abolishment of positions listed in the Agreement at one location, the discontinuance of work thereat, and the assignment of duties (if any) that remained to other positions at another location, also listed in the Agreement. The decision in that case is typical of that which has consistently been held in respect to the right of the carriers "to abolish positions included in agreements when there is no longer work to be performed" because of its disappearance or its removal to other location and performance there by other employes under the Agreement entitled to perform it. See the following from the Opinion of Award No. 368 dealing with the issue:

> "It has been held repeatedly by this Board, first, that carriers have a right to abolish positions included in agreements when there is no longer work to be performed in those positions, and second, that the removal of work from the scope of agreements by arranging for its performance by employes not covered by those agreements gives rise to violations for which redress may be claimed by and granted to the employes. There appears to be no contention by either of the parties to this dispute in conflict with these holdings. The basic issues here involved is one of fact: whether the telegraphic positions at Prairie du Chien were actually abolished, the work of these positions being transferred to Crawford Tower; or whether telegraphic service continued to be rendered at Prairie du Chien, the work of these positions being performed by clerks not falling within the scope of the Telegraphers' Agreement. This claim, which is based upon the second of these two views of the facts, alleges a violation as of May 26, 1931, requesting that the three operators who were then incumbents of these posts 'be returned to their regularly assigned positions from which displaced and reimbursed any monetary loss sustained thereby.' "

The claim in Award No. 368 was thereupon denied. That was but to say that, though work formerly performed by 3 employes under the Telegraphers' Agreement at one location (Prairie du Chien) had been discontinued at that location, the 3 positions thereat abolished, and the work transferred to other employes at another location (Crawford Tower), there was no violation. Similarly in the instant parallel circumstances there could not have been any violation.

The instant Award in discarding this Opinion of Award No. 368 and those other Awards, which it discarded for its given reasons that here the work was not assigned to outside employes and that the factual situation here was different, evidently recognizes that those former Awards confirmed the right of carriers to abolish positions when there is no longer work to be performed in those positions but does not recognize their equally controlling findings that such abolishment is also proper whether the discontinued work has disappeared in whole or in some cases in part or has been performed thereafter by occupants of other positions covered by the Agreement entitled thereby to perform it.

This Award insufficiently apprehends the decisions of previous awards and misinterprets the Agreement.

/s/ C. C. Cook