

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central of Georgia Railway Company,

- (1) That the Carrier violated Article 4-(a), 5-(d), and 7-(d) of the Telegraphers' agreement and Notice and Order No. 1 and Notice of Instructions of Federal Manager C. H. Buford of Government Controlled Railroads of May 17, 1946, when, on May 24 and 25, 1946, the Carrier declared "abolished" the positions of the claimants named in the following Employees' Statement of Facts on the day or days specified therein, because of the engineers' and trainmen's strike commencing May 24, 1946, and has refused to pay these claimants their wages for the day or days on which they were thus improperly suspended from work during their regular hours; and
- (2) That each of the claimants named in the Employees' Statement of Facts who were thus improperly deprived of their usual employment by the Carrier on the day or days involved by being improperly suspended during their regular hours and who were ready for service and not used, shall be reimbursed for the wage loss suffered on the day or days involved as a result of this improper act of the Carrier.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of April 1, 1945, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

Due to a threatened strike of the engineers and trainmen the United States took possession of the Central of Georgia Railway Company effective 4:00 P. M. on May 17, 1946, by means of the following quoted Notice and Order No. 1:

"NOTICE AND ORDER NO. 1

To each carrier by railroad named in the Executive Order of the President of the United States, Dated May 17, 1946, concerning possession, control, and operation of certain railroads:

1. By order of the director of the Office of Defense Transportation, dated May 17, 1946, the authority vested in said director by Executive Order of the President of the United States, dated May 17, 1946, whereby possession, and control of your transportation system, plants, and facilities are taken and assumed by the

trolled Railroads. The Board is familiar with this Order and also Mr. Buford's telegram dated May 24 to all railroads, a copy of which was sent to this Carrier. A copy is attached and marked Exhibit "D". This telegram, among other things, advised the railroad managements that they were not required to retain in service employees for whom they had no work, and the reason for the abolishment of these Operators' positions was that there was no work.

This Carrier contends that the positions of these Operators were actually abolished, as there was no work for them to perform, and there is nothing in the Telegraphers' Agreement that prohibits the abolishment of positions, nor is there any rule requiring a specified number of hours' or days' notice for the abolishment of positions.

The Carrier contends, further, that if it had not received the request from the Telegraphers as contained in Exhibits "B" and "C", if and when the strike ended the positions would have been re-established by proper bulletin. The Carrier also contends that there was no violation of any rule in the Telegraphers' Agreement, nor of any order or directive of the President of the United States or Federal Manager of the Government Controlled Railroads, of which this Carrier was one. There is no merit in the claim and we are confident it will be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 23, 1946, locomotive engineers and trainmen went on a nation-wide strike which suspended railroad operations almost completely. During the afternoon of that day, the Carrier gave the following notice by telegraph to the employees involved in this dispute:

"Effective with the completion of your day's work today May 23 account strike of B of L E and B R T, your position is abolished. Leave your address and telephone number in order that you may be promptly notified when needed for duty. You may exercise your seniority under the terms of your agreement."

Claimants contend that the effect of this notice was to suspend them from their work during their regular hours on the days specified in the claim. The rulings of this Board have been consistent in holding that a carrier may abolish a position when no work remains to be performed. Awards 4001, 4389. The important question here is whether the Carrier actually abolished the positions. There is language used in the notice given the employees indicating an intention to abolish the positions. The work "Leave your address and telephone number in order that you may be promptly notified when needed for duty", therein contained, is clearly indicative of a suspension of work. It is evident that the Carrier knew that these positions would not be "abolished" for long, otherwise the exhortation to leave addresses and telephone numbers would not have been sufficiently important to include in the telegraphic notice. While it is true that Carrier returned these employees to their former positions by agreement, without rebulletining, we think the evidence is clear that Carrier was attempting to avoid payment under the guarantee rule rather than to abolish the positions in the sense that the Agreement intends. We think this conclusion is sustained by the previous awards of this Division. Awards 3680, 4001, 3701, 3715, 4389. Consequently, the Carrier violated the guarantee rule, Art. 4-(f), and the rule prohibiting suspension of work during regular hours, Art. 5-(d). An affirmative award is in order.

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 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 violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.