Award No. 4759
Docket No. MW-4556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GALVESTON WHARVES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier erred on April 28, 1941, by abolishing the position of Shop Mechanic, and allocating the duties of this position to other parties;

(2) That Shop Mechanic Harry L. Moore be reimbursed for the difference in pay received at B&B Mechanic's rate and what he should have received at Shop Mechanic's rate during the period April 28, 1941, to February 5, 1944, at which time the position was restored to him.

EMPLOYES' STATEMENT OF FACTS: Prior to April 26, 1941, H. L. Moore was a Shop Mechanic employed by the Carrier to operate the shop machines in the performance of the Carrier's work at Galveston.

On April 26, 1941 the Carrier abolished the position of Shop Mechanic. Mr. H. L. Moore was then assigned to work with the B&B Crew on the Wharf.

The Carrier re-established the position of Shop Mechanic in February of 1944.

During the period from April, 1941 to February, 1944 other persons performed the duties of the position of Shop Mechanic.

The mill work on planks and other lumber formerly performed by H. L. Moore was done by the Gulf Lumber Company at Galveston. The material was loaded onto trucks and brought uptown to the Lumber Company, then later trucked back again.

The cutting up of fire wood on the Shop saw for the pile driver and hoists was performed by other employes. This work was one of the assigned duties duties of the Shop Mechanic.

The making and painting of signs was given to a sign shop in town. This work was a part of the assigned duties of the Shop Mechanic.

Wooden wedges for use by the pile driving crew and the B&B gangs which were formerly made by the Shop Mechanic were purchased by the Carrier from the Gulf Lumber Company.

Whenever the occasion required, other of the Carrier's employes would use and operate the Shop machines—work that formerly was performed by the Shop Mechanic.

tions imposed by the State Laws, has attempted to handle complaints and grievances presented by the Brotherhood of Maintenance of Way Employes fairly and justly. However, the employes are not represented by a man who lives in Galveston or who has ever had an employe relationship with the Galveston Wharves. This situation makes it difficult for the officials of the Galveston Wharves to deal with this representative directly, since he knows very little about the nature of our operations. The operation of the railroad by the Galveston Wharves is a very small part of our business, and we have a limited number of employes that are engaged in railroad work. It is our understanding that the General Chairman is connected with a large railroad operating through many states and that there are many fine points in jurisdiction, etc., met by a large railroad employer that have never confronted a line with a small amount of railroad, such as we have. We have done everything within reason to treat our employes properly, but do object to being summoned before your Honorable Board in the case presented against us here. We have never ratified the Agreement made between the Galveston Wharf Company and the Brotherhood of Maintenance of Way Employes. We have looked upon its provisions as a way in which seniority and other provisions of the Agreement are customarily handled in the railroad industry, and have given consideration to all arguments advanced by the Claimant, but we do not recognize the jurisdiction of the Board to consider claims made by the employes of the Galveston Wharves through an employe representative who is not and never has been an employe of the Galveston Wharves, and who is not a resident of Galveston. We respectfully petition the Board to decline the claim here presented by the Brotherhood for the foregoing reasons.

SUMMARY: The Galveston Wharves has shown that at no time has it negotiated an agreement with the Brotherhood of Maintenance of Way Employes and that it is an agency of the City of Galveston, that its operations are controlled by the laws of Texas, that these laws forbid us to enter into a bargaining agreement with a labor organization. The Galveston Wharves has shown that the claim presented by Harry L. Moore in 1946 was moot when it was presented, that it was vague and indefinite and that it was not handled in the manner set out in the Railway Labor Act. It has shown that the claim lay dormant again for a long period after it was rejected. It was brought before the Board 8 years after the date for which the claim is filed.

The Galveston Wharves respectfully requests an opportunity to appear before the Board in oral hearing and make such answer to the Organization's Submission in this case as may be deemed proper.

Whereas, in consideration of the facts, applicable laws of the State of Texas, and decisions of your Honorable Board in similar disputes, the Galveston Wharves urges that the claim made by the Organization in behalf of Harry L. Moore be, in all things, denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier makes the same challenge to the validity of the Agreement in question and the jurisdiction of this Board as it did in Award No. 4756. Our Findings as to jurisdiction in that Award will apply here. The Carrier also urges the same defense of laches in the prosecution of this claim and for the reasons set forth in said Award No. 4756 that defense will also be overruled in this case.

There is no dispute as to certain facts: Prior to April 26, 1941, H. L. Moore was a Shop Mechanic employed by the Carrier to operate the shop machines in the performance of the Carrier work at Galveston. On April 26, 1941, the Carrier declared that position abolished and assigned Claimant Moore to work with the Bridge and Building crew as a carpenter. The Carrier re-established the position of Shop Mechanic on February 5, 1944, and Moore was reassigned the position on that date. The Employes claim the Carrier violated the Agreement by abolishing the position of Shop Mechanic and allocating the duties of the position to others not covered under the Agreement. In support of the clam the Employes have listed certain work such as filing saws for wharf gangs, cutting fire wood, making signs and wooden wedges for use of

pile driving crew, as work formerly performed by the Shop Mechanic which was assigned to others during the time that the position in question was declared abolished. The Carrier denies that work such as cutting firewood, filing saws, and painting signs was shop mechanic's work and that one man could make enough wedges in three days to last three years.

The parties agree that the Carrier has the right to abolish a position when the work of the position has ceased to exist. Many awards of this Board have held that a position may be abolished even though some of the work of the position remains, however, a substantial amount of the work must have ceased to exist. From the facts before us, it is our opinion that the Carrier was justified in abolishing the position in question by reason of the fact that more than a substantial amount of the work on the position had ceased to exist.

Although the Employes have listed certain items of work that remained after the position was abolished, nowhere in the record do they state what percentage of the total work of the position the listed work represented. The Carrier states that if all the listed items of work were admitted it would not amount to thirty days' work during the period in question, and this statement sands unrefuted. It is our opinion that, if only thirty days' work during a period of approximately three years was performed on an abolished positon, it would not be substantial enough to hold the Carrier in violation of the Agreement for abolishing the position. We think the Claimant has failed to prove that a sufficient amount of work remained on the abolished position, and was assigned to and performed by other parties outside the scope of the Agreement, to hold the Carrier violated the Agreement by abolishing the position and the claim will, therefore, be denied.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.