

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Gulf, Mobile and Ohio Railroad Company (Southern Region) that:

1. (a) the Carrier violated the terms of the Agreements in effect between the parties when it arbitrarily declared abolished five positions located at Jackson, Tennessee, namely, the positions of ticket agent, assistant ticket agent, first, second and third trick relay telegraphers, effective August 31, 1949, without discontinuing the work being performed by the occupants of the five positions;
- (b) permitted the regular assigned occupants of these positions to exercise displacement privileges;
- (c) allegedly created three positions as of September 1, 1949, namely—a ticket agent-operator and two positions of assistant ticket agent-operator at Jackson, Tennessee, advertising these three positions, the occupants thereof being required to perform the same duties that were performed by the occupants of the positions allegedly abolished on August 31, 1949; and,
2. the Carrier shall now restore the conditions, as to positions and occupants thereof, as existed on August 31, 1949, at Jackson, Tennessee, the occupants of these restored positions to be compensated for any loss in wages sustained by them, plus reimbursement for any expense incurred; and,
3. all other employees who may have been adversely affected as a result of this improper action on the part of the Carrier shall be restored to former positions and paid any loss of wages they may have sustained and any other incurred expense because of this violative action on the part of the Carrier.

EMPLOYES' STATEMENT OF FACTS: The facts as pertain to the action of the Carrier are covered by paragraph 1 of the claim. Three separate agreements are in effect between the parties to this dispute, an agreement on the former Mobile & Ohio Railroad Company having an effective date of March 1, 1929, amended as to rates of pay and working conditions, an agreement on the former Gulf, Mobile and Northern Railroad Company having an effective date of February 1, 1928, amended as to rates of pay and working conditions; also Memorandum of Agreement between The Gulf, Mobile & Ohio Railroad Company and the Organizations effective date of November 28, 1940.

Carrier respectfully requests that this claim be declined for the following reasons:

1. The agreement of November 28, 1940, clearly contemplated and provides for the action taken by the Carrier in abolishing, effective September 1, 1949, the five positions at Jackson, Tennessee. The five positions are listed in the agreement wherein it provides that "The following positions in the coordinated forces are subject to their being discontinued or abolished . . ."
2. The correspondence between the parties in other instances where positions have been abolished, changed in location, hours of assignment, and character of required service, or new positions have been created, clearly establishes that such action is contemplated under the provisions of the agreement and has heretofore been accepted and acted upon accordingly by the employee representatives and the Carrier.
3. The agreement of November 28, 1940, provides for the establishment of new positions.
4. The employee representatives have failed to carry out their obligation under the provisions of the November 28, 1940, agreement by not properly informing Management that such abolished positions should be those of former GM&N employees or former M&O employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This case concerns the validity of the abolishment by the Carrier of five positions (Ticket Agent, Assistant Ticket Agent and Telegraph Operator, 1st, 2nd and 3rd tricks) and the establishment in their place of three new positions (Ticket Agent-Operator and two Assistant Ticket Agent Operators).

The Carrier is the successor of two railroads, the Gulf, Mobile and Northern and the Mobile and Ohio, the coordination of which led to a special agreement dated November 28, 1940, between the Carrier and the Organization. The question is whether the requirements of Section 6(c) were met.

All of the positions are in the coordinated forces and the action was taken pursuant to Section 6(c) of the Special Agreement which reads as follows:

Section 6. "(c) If the Management should desire to establish a new position, or to abolish an existing position, in the coordinated forces, the employees' representatives will be given ten (10) days written notice of such desire and intention, and, within thirty (30) days, they will inform Management whether such position should be that of a former GM&N employee or a former M&O employee. It is agreed that a new position may be temporarily filled by Management, pending advice from employees' representatives . . ."

The Management gave two written notices that the positions were abolished effective at the close of business August 31, 1949, one notice dated August 6, 1949, addressed to the two Ticket Agents and another dated August 20, 1949, addressed to the three Telegraph Operators. A copy of each notice went to the General Chairman. It stands admitted that the General Chairman received the notices and that they were timely. They were sufficient notices under the Section notwithstanding the want of punctilio in not addressing them to the General Chairman.

It was also proper under the Section to fill the new positions before the thirty days had elapsed, "pending advice from the employees' representatives" whether former GM&N employees or former M&O employees should fill the positions. And since no such advice was given within the thirty days, the question of how the vacancies should be filled is closed.

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

That both parties to this dispute waived oral hearing thereon;

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 special agreement dated November 28, 1940, was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.