

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

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

(a) Carrier violates the rules of the Clerks' Agreement when it refuses to apply the rules of that Agreement covering promotions, assignments and displacements to all Class 3 employees in the Building Superintendent's Department; and,

(b) Carrier violated the rules of the Clerks' Agreement when on April 3, 1950, it refused to allow Walter Smith displacing rights upon the abolishment of his position; and,

(c) Carrier shall now assign Walter Smith to the position of private office janitor presently occupied by a junior employe C. S. Sudduth, and compensate him for eight (8) hours for each work day held off the position to which his seniority entitles him.

EMPLOYES' STATEMENT OF FACTS: The regular cleaning forces in the Carrier's General Office Building at Topeka, Kansas, consisting of approximately forty positions, constitute one seniority district and are under the supervision of the Building Superintendent. This force is divided into two groups, the day force and the night force, with approximately 40 per cent assigned between the hours of 7:00 A. M. and 5:30 P. M. and 60 per cent between the hours of 4:45 P. M. and 2:00 A. M. Some of these employees are assigned to cleaning certain private offices, some operate the elevators and check people in and out of the building, some clean windows, toilets, wash basins, drinking fountains, some are assigned to sweeping and mopping, some work in gangs while others work independently and, until the instant claim arose, two members of the night force were assigned to dusting, one of whom is the claimant in the instant action.

On March 27, 1950, Mr. Sam Anderson, Carrier's Night Foreman of the Janitor forces, verbally notified the two dusters, W. H. McAlister and Claimant Walter Smith, in the presence of each other and before at least three other witnesses, that their positions, the duties of which consisted of dusting furniture, closing windows, turning out lights and picking up waste paper, were being abolished as of the close of their work period on March 31, 1950, and that dusting, the major duty of both positions and which consumed approximately seven and one-half hours of their time during each

Attention is also directed to Third Division Award No. 4730, which sustained the alleged violation of the agreement but denied a claim for penalties identical to that advanced by the Employees in the instant dispute in the following language:

"With respect to claim (3), we find no basis for sustaining the same. There is no provision in the Agreement which would support an award on such a basis. We see no basis in reason or logic for this Board taking any such action as is requested by that part of the claim."

In conclusion the Carrier reasserts that the claim is, for the reasons stated herein, entirely without merit and should be denied.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's work ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the employees or their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was incumbent of position 74, which position required duties of dusting furniture, closing windows, turning out lights and picking up waste paper in the office building operated by Carrier at Topeka, Kansas. It is alleged Carrier arbitrarily, on March 29, 1950, abolished the position, effective March 31, by oral notice from the night foreman, that the dusting positions would be abolished. There is no denial in the record by either of the parties that the time required to perform the dusting duties was 7½ hours of the regularly assigned 8 hour position. The Organization contends that by abolishing the dusting position, Carrier created a new position which consisted of sweeping duties, and by which Carrier arbitrarily required the claimant to perform, and by such action was not allowed to exercise his seniority rights to a position of cleaning private offices, then held by an employee junior to the claimant. This contention is borne out by letter of claimant to Carrier of March 29, 1950, requesting Carrier for position of "cleaning private offices", if he was entitled to it, and in addition he stated his position was abolished.

The Organization cites Article E, Sec. 1, and Article III, Sections 1 (a), 1 (c), 2, 3, 4, and 13 (a) as supporting their contentions, and request that since Carrier has violated the provisions of the agreement, the claimant be assigned to the position of private office janitor now occupied by an employee holding junior seniority to claimant, and in addition request claimant be paid 8 hours pay for each day held off such position by Carrier.

The record discloses that claimant did displace the employee holding the position he requests the Board to award him, on May 23, 1951. Therefore this claim cannot extend beyond the period from April 3, 1950, to, but not including, May 23, 1951.

Carrier contends that it at no time has abolished the position as alleged, and therefore it had, as it contends, a right to discontinue the dusting duties at any time, and to add new duties, such as sweeping, at its discretion, and it did not violate the Agreement, particularly by its refusal to allow the employee to exercise his seniority to take a different position, because the employee claims his position was abolished.

After reviewing this file, it appears the only question this Board has to determine is whether or not Carrier abolished position #74 as alleged. If it was abolished, and Carrier refused claimant the right to exercise his

seniority, the claim should be sustained. If not abolished, the claim should be denied.

We are not in accord with claimant's contention that his position was abolished. Carrier denies it abolished the position and from a review of all the file, we find that Carrier did discontinue the work of dusting, and at the same time added to the position the work of sweeping. We are unable to find any restriction in the Agreement prohibiting Carrier from adding to or taking away any of the duties of a position. This is one of the prerogatives of management and as we said in Award 5331, "the assignment of work necessary for its operations lies within Carrier's discretion", such action by Carrier applies to the claim before us.

Since we hold the position was not abolished as alleged, the claim should 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 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 there is no proof in the record that Position #74 was abolished.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.