

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rules 4-A-3 and 4-F-1, when certain positions located at the Passenger Car Department, Wilmington Shops, Wilmington, Delaware, Maryland Division, were abolished effective August 30, 1951.

(b) The incumbents of these positions and all other employees affected be returned to their former positions and be compensated for all wage loss.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimants in this case all were the incumbents of regular positions, immediately prior to August 30, 1951, located in the Passenger Car Department, Wilmington Shops, Wilmington, Delaware, Maryland Division, which positions were fully covered by the Scope and all of the provisions of the effective Rules Agreement, and had seniority standing in either Group 1 or Group 2 of the Seniority Roster for the Maryland Division. The primary claimants are shown below.

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 such action.

CONCLUSION

The Carrier has shown that the positions herein involved were properly abolished in accordance with the provisions of the applicable Agreement, and that the claim of the Employees here before your Honorable Board is wholly without merit.

It is respectfully submitted that the claims are not supported by the applicable Agreement and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: There is evidence of an Agreement between the parties, bearing effective date of May 1, 1942, amended September 1, 1949, to conform to the 40-Hour-Week Agreement. The following facts were stipulated by the parties: Under date of August 27, 1951, the following notice was issued by the Master Mechanic, Passenger Car Department, Wilmington, Delaware, consisting of the Electric, Paint, Tin, Upholstery and Car Erecting Shops, will be temporarily shut down from 5:59 A. M. Eastern Standard Time, Thursday, August 30, 1951, until 5:59 A. M. Eastern Standard Time, Tuesday, September 4, 1951. Therefore, the following positions will be abolished, effective 5:59 A. M. Eastern Standard Time, Thursday, August 30, 1951. The employees affected by the abolishment of the positions, with their names, position held, symbol number, location and roster number, all appear in the record, and we deem it unnecessary to set forth here. However, we have taken cognizance of the same. In addition, the stipulation discloses at the time these positions were abolished it was known that the shut-down would be for a definite period and that positions would be reestablished. On August 29, 1951, these positions were advertised, advertisements expiring 8:00 A. M., Wednesday, September 5, 1951, and notices of awards were issued under date of September 5, 1951, effective September 10, 1951.

The cardinal rule here involved is 4-A-3, as follows:

"The working days per week for regularly assigned employees shall not be reduced below five unless agreed to by the Management and the General Chairman, except that this number may be reduced in a week in which holidays occur by the number of such holidays. This Rule (4-A-3) does not prohibit the abolition of a position at any time."

This Rule specifies that regularly assigned employees shall not be assigned to work less than five days a week except by agreement. The last sentence of this rule constitutes an understanding that the Rule will not effect the Carrier's right to abolish a position.

It is the Employees' contention that the abolishment of the positions was not a legitimate nor bona fide and in fact was merely a paper abolishment, while the position of the Carrier is plain that the positions were abolished for the reason that the budget for the same had expired and to effect an economy the abolishment of the positions would have to be had.

There is no question but that no work was performed on the abolished positions in the Car Department during the period of the shut-down. Neither is it doubted in any manner that the Carrier properly followed the machinery prescribed in the rules of the Agreement as to the abolishment of positions. And to this the Organization agrees.

There are several Awards to the effect, namely Award 6099, wherein it is said it is unquestioned that under the cited rule the Carrier can abolish positions where work has disappeared. The abolishment of positions under such circumstances as appear in this record and for such purposes is a bona fide abolishment. This has been recognized in Award 5042. In addition thereto, in speaking of the budget as here involved, to say the officials of the Carrier might have foreseen the necessity for reducing expenses and thereby had avoided a shut-down amounts to conjecture and speculation. The Carrier is not required to anticipate such event. (See Award 5522.) Award 3884 is relied upon by the Employees. The Guarantee Rule there was Rule 28. It did not specifically provide for the abolishment of positions at any time, which distinguishes it from the rule in question. There the record disclosed that some of the work of the abolished positions was done by others pending the return of the employees when the Carrier called the employees back to work their former positions and then only belatedly bulletinized the positions, as against the situation in the instant case where it properly followed the machinery for rebulletining the positions. Award 6024 is relied upon. In that award no reason was given for abolishment of positions and there is no denial the work was reassigned to others. And in the instant case the work disappeared entirely and no work was done. In addition, in that award the Carrier crossed seniority lines prohibitions, which was not done here.

It is the prerogative of management, especially so under the facts and the rule in question, to abolish positions at any given time and the reason here given is reasonable, bona fide and legitimate.

For the reasons given here the award should be and is hereby 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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.