

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5780) that:

1. The Carrier violated the established practice, understanding, provisions and Rules of the Clerks' Agreement and the National Agreement of June 5, 1962, Article III when the Carrier failed and refused to give proper and sufficient notice to Clerks Heath and Ludwig when they abolished their positions on September 24, 1964.

2. The Carrier shall pay Clerks Heath and Ludwig for all loss of pay starting on September 25, 1964 and for each day thereafter until such time as the Carrier corrects the violation and gives Clerks Heath and Ludwig advance notice of at least five (5) work days of the abolishment of their positions in accordance with the Clerks' Agreement and the National Agreement of June 5, 1962.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreements, effective July 1, 1945 and as amended up to and including April 1, 1964, and the National Agreements signed at Chicago, Ill. on August 21, 1964, and June 5, 1962, covering clerical, other office, station and storehouse employees between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this Statement of Facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Rules Agreement, particularly Article III of the June 5, 1962 Agreement, when the Department Head failed and refused to give not less than five (5) working days' advance notice, as required before the abolishment of a position and instead during the claimants tour of duty on September 18, 1964 they were handed a notice of the abolishment of their positions effective September 24, 1964.

On September 18, 1964, Clerks Heath and Ludwig during their tour of duty at the Pennsylvania Ticket Office where served notices of the abolishment of the positions on September 24, 1964.

On September 21, 1964, Claimant Heath wrote to the Terminal Supervisor protesting the abolishment notice dated September 18, 1964. A copy of his letter is attached hereto and made a part hereof, marked "Carrier's Exhibit B."

On October 20, 1964, Claimant Heath wrote to the Manager of Stations advising that he did not have displacement rights and that he had obtained employment in California. A copy of this letter is attached hereto and made a part hereof, marked "Carrier's Exhibit C."

The Manager of Stations replied to this letter on October 27, 1964, advising Claimant Heath of his obligations under the Clerks' Agreement. A copy of this letter is attached hereto and made a part hereof, marked "Carrier's Exhibit D."

On November 17, 1964, Claimant Heath wrote to the Manager of Stations from California reiterating his position that he did not receive proper notice and that he will continue to be available to work position F-293. A copy of this letter is attached hereto and made a part hereof, marked "Carrier's Exhibit E."

On November 20, 1964, the Manager of Stations wrote to Claimant Heath at his California address advising him that if he failed to return to duty not later than December 8, 1964, we would presume that he had resigned. A copy of this letter is attached hereto and made a part hereof, marked "Carrier's Exhibit F."

Subsequently, claims were progressed to the Director of Personnel by the General Chairman and were denied on January 27, 1965. A copy of the denial is attached hereto and made a part hereof, marked "Carrier's Exhibit G."

On June 10, 1965, the Director of Personnel was notified by the Secretary of this Division that the Grand President of the Brotherhood had filed his intention to submit an ex parte submission involving this unadjusted dispute. A copy of this letter is attached hereto and made a part hereof, marked "Carrier's Exhibit H."

On June 11, 1965, the Director of Personnel was notified by the Administrative Secretary of the National Railway Labor Conference that the dispute was submitted to the National Disputes Committee for the purpose of interpreting Article III of the June 5, 1962, Agreement. A copy of this letter and a copy of the Brotherhood's submission are attached hereto and made a part hereof, marked "Carrier's Exhibits I and J."

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. During Claimants tour of duty on September 18, 1964, they were given written notices that their positions would be abolished effective September 24, 1964.

The questions involved are whether the Carrier complied with Article III of the June 5, 1962, National Agreement, by giving advance notice of abolishment of not less than five (5) working days' to the Claimants and whether Carrier violated Rule 3-C-1(e) by failing to promptly post a bulletin in the seniority district affected, showing that the two (2) positions were so abolished.

Carrier has not refuted or denied the fact that it failed to promptly post a bulletin, as required under Rule 3-C-1(e), showing the two positions abolished, therefore it must be held that the Carrier violated this rule. Further, the Board is not convinced by Carrier's arguments and Awards that the working day, during which Claimants received their notices, must be included in computing the five working days advance notice. The Awards relied on by Carrier cite time limits on the filing of "claims" or "complaints" under various rules of different agreements, and in our opinion, are not analogous to advance notice requirements as set forth by Article II of the June 5, 1962, National Agreement. We find, therefore, that Carrier's notice to abolish the two positions did not meet the strict requirements of Article III. Carrier gave only four (4) working days notice instead of five (5).

There has been a violation of the Agreement, therefore, what damages, if any, are the two Claimants entitled to receive?

Carrier contends that the most the Claimants could be awarded is one day's pay. Petitioner urges that Carrier's violation of the Agreement is a continuing one and Claimants are entitled for all loss of pay starting on September 25, 1964 and for each day thereafter until such time Carrier corrects the violation and gives Claimants notice in accordance with the Clerks' Agreement and the National Agreement of June 5, 1962.

It is pertinent to note each of the Claimants actions after their positions were abolished. Claimant Ludwig on October 5, 1964 reverted to the extra list under the provisions of Rule 3-C-1(a) of the scheduled Agreement. Claimant Heath, though notified several times by Carrier to exercise his seniority, refused to so elect and insisted on returning to work only if Carrier restored the abolished position.

The Board can only conclude from the facts in the instant dispute, that Claimant Heath ignored Rule 3-C-1(a) procedure available to him under the Agreement.

A purpose of Rule 3-C-1(a) is to give an employe displaced from his regular position opportunity to exercise his seniority within twenty-nine (29) days or forfeit **this right.**

In Award 14705 the Board said in part:

" . . . The purpose of advance notice before a position is abolished is to advise the incumbent employe and to give him time to exercise his seniority rights and thus reduce, if not eliminate, probable loss of earnings." (Emphasis ours.)

Claimant Heath ignored the purpose of Rule 3-C-1(a) and did not attempt to exercise his seniority or reduce probable loss of earnings — alleging that to do so would further violate the Clerks' Agreement by jeopardizing junior employes through illegal displacement. In Award 10315 the Board overruled this argument and said:

" . . . It seems equally clear here that where the person whose position was abolished did not exercise her seniority rights, there is no person whose position was jeopardized by the failure to post the bulletin . . ." (Emphasis ours.)

Therefore, since Carrier's notice did not meet the clear and unequivocal requirements of Article III, Claimants are only entitled to compensation in such sum as would have accrued to them had the notice provision of Article III been complied with by Carrier. (Award 6354.) Part (2) of the claim sustained for one day's pay at the pro-rata rate for each Claimant.

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

That the parties waived oral hearing;

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.

AWARD

Part (1) of claim sustained.

Part (2) sustained as set forth in opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.