

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6022) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it improperly abolished the position of Rate Clerk No. 35, instead of abolishing the position held by the junior rate clerk as provided for in Rule 20 of the Agreement, thereby denying the claimant Mr. T. E. Cook, the right to bid in the position of Rate Clerk at \$22.75 per day.

(b) Mr. Cook shall now be compensated \$0.93 per day the difference between pay rates \$21.82 and \$22.75, beginning February 1, 1965 and continuing until Rate Clerk position is properly bulletined and Mr. Cook allowed to bid on same.

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 holds a position and the Southern Railway Company.

Mr. T. E. Cook is carried on the Southern Railway System, Accounting Department, Office of Director, Revenue Accounting, Freight Accounts District, Seniority Roster—Group 1, Clerks, with a seniority date of March 16, 1952.

Under date of January 25, 1965, Vacancy Bulletin No. 131 was issued by Mr. J. T. Bolling, Director, Revenue Accounting, Atlanta, Georgia, advertising position of Head Clerk, rate \$25.20 per day. This position was assigned to Mr. V. V. Pierce, who has a seniority date of April 2, 1923, effective February 1, 1965, by Assignment Bulletin No. 131 A, dated January 28, 1965.

Under date of January 29, 1965, Mr. J. T. Bolling, Director, Revenue Accounting, Atlanta, Georgia, issued Abolishment Bulletin No. 133, abolishing, effective with termination of assignment on January 29, 1965, the position of

(c) (Effective February 11, 1918.) The term vacancies covers old or new positions to be filled.

* * * * *

"RULE 20. ABOLISHING POSITIONS

(Effective October 1, 1938.)

When forces are reduced the position to be abolished shall be the position or positions which are no longer needed; if there be two or more positions doing the same kind of work paying different rates in the office where such abolishment is to be effected, the position paying the lowest rate shall be abolished.

Understood and agreed that in reducing clerical forces, where there are two clerical employees in the same office assigned to the same class of work, working the same hours and receiving the same rate of pay, if one of the positions is to be abolished it will be the position filled by the junior of the two employees."

"RULE 46.

PRESERVATION OF RATES AND EMPLOYMENT

(a) (Effective June 1, 1921.) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

* * * * *

(f)(2) Nothing in this Rule 46 shall affect or prevent the abolishment of positions at any time."

OPINION OF BOARD: On January 28, 1965, the position of Rate Clerk (35), paying \$22.75 per day was vacated by the incumbent because of his promotion to a higher rated position. On January 29, 1965, position No. 35 was abolished by the Carrier. Claimant at that time occupied the transit clerk position, \$21.82 per day in the Station Accounting Bureau. The abolished position was in a different department and involved a different seniority district from that of the Claimant. Nevertheless, a claim has been submitted requesting compensation for Claimant in the amount of \$0.93 per day, the difference between \$21.82 and \$22.75, beginning February 1, 1965 and continuing until Rate Clerk position is properly bulletined and Claimant is allowed to submit his bid.

Petitioner has alleged a violation of several rules of the Agreement, more particularly Rules 16 and 20; arguments have been offered for consideration.

to the effect that even though Claimant was working in a different department and in another seniority district, since he desired to return to his former department on a rate clerk position, he should have been permitted to do so.

Petitioner in furtherance of his position consequently contends that the position of rate clerk was not properly bulletined in accord with the provisions of Rule 16 of the Agreement. This rule reads in pertinent parts as follows:

"RULE 16.
FILLING VACANCIES UNDER SENIORITY RULES

(a) * * *

* * *

The officer in charge where vacancy occurs will, within two days, bulletin such position to all employes of the group or class on the seniority district in which the vacancy exists.

(c) (Effective February 11, 1918.) The term vacancies covers old or new positions to be filled."

The above rule in no way proscribes Carrier from abolishing a position which has been vacated. It merely prescribes the procedure to be followed when in the exercise of its managerial power, it decides to fill a vacancy then existing. Paragraph c of Rule 16, quoted above, by definition refers only to "positions to be filled" and not to those which have or are to be abolished. We cannot agree with Petitioner that this rule has been violated.

We now direct our attention to Rule 20, which reads as follows:

"RULE 20. ABOLISHING POSITIONS
(Effective October 1, 1938.)

When forces are reduced the position to be abolished shall be the position or positions which are no longer needed; if there be two or more positions doing the same kind of work paying different rates in the office where such abolishment is to be effected, the position paying the lowest rate shall be abolished.

Understood and agreed that in reducing clerical forces, when there are two clerical employes in the same office assigned to the same class of work, working the same hours and receiving the same rate of pay, if one of the positions is to be abolished it will be the position filled by the junior of the two employes."

The language of the above cited rule refers in clear, unambiguous and precise words to positions being "filled" by two employes in the same office, and as such on a factual basis, is totally inapplicable to the instant case. To agree with Petitioner in this case, we would have to say that the rule required the abolishment of an occupied position for the benefit of someone working outside that office. Clearly Rule 20 is exclusively concerned with the rights of employes in the office involved. The vacancy was not in Claimant's office, nor in his seniority district, hence the aforecited rule has no applica-

tion to the issue presented. Carrier rightfully abolished the position in strict accordance with the Agreement. There was no violation. Claim 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 Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.