NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25483

THIRD DIVISION Docket Number CL-24668

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9603), that:

(1) Carrier violated the Clerk-Telgrapher Agreement when it failed and refused to issue notifications of intent to permanently discontinue second-trick Operator Clerk position C-86 at Mount Vernon, Ohio and Operator Clerk position C-66 at Cambridge, as required by the terms of Appendix H, Memorandum of Protective Agreement, and

(2) Carrier shall, as a result thereof, compensate Mr. E. L. Barton, former incumbent of Operator Clerk position C-86 at Mount Vernon, Ohio, eight (8) hours' pay commencing July 23, 1981, and continuing each subsequent work-date until Carrier complies with terms of the Agreement, and

(3) Carrier shall, because of such impropriety, also compensate Miss V. N. Teagarden, former incumbent of Operator Clerk position C-66 at Cambridge, Ohio, eight (8) hours' pay commencing July 23, 1981, and continuing each subsequent work-date until Carrier complies with the terms of the Agreement.

OPINION OF BOARD: The abolishment of the two positions that are the subject of this claim was occasioned by a labor dispute between the VMA and the Bituminous Coal Operators Association. Under Rule 42/c) of the Agreement an emergency condition existed, and no advance notice of the temporary abolishment of the positions was necessary. On the 46th day after the emergency ended the Carrier permanently abolished the two positions and placed the Claimants under protective status, without any notice to the Organization's General Chairman. The dispute concerns a reading of Rule 42(c) in conjunction with Article I of the Protective Agreement known as Appendix H to the Agreement.

Article I of Appendix H defines "Job Abolishments".

"The term 'permanent abolishment (elimination-discontinuance) of a position' as used herein, as defined as follows:

Section 1. The abolition, elimination or discontinuance of any position (including positions assigned to extra boards) coming under the BRAC agreement, except:

(b) The abolishment of a position in emergency under the provisions of Rule 42(c) or (d), provided said positions are re-established at the termination of the emergency or within forty-five (45) days thereafter."

Both Parties to this dispute urge different interpretations of these contract provisions. The Organization sees the contract as requiring the temporarily abolished positions to be re-established and then "re-abolished" under the notice provisions of Appendix H. The Carrier contends that Rule 42(c) and Article I of Appendix H when read together eliminate the requirement for re-establishment and subsequent notice of permanent abolishment.

In the Board's opinion the Carrier's contention is not persuasive. The absence of any advance notice of temporary abolishment is appropriate under Rule 42(c) when an emergency such as a "labor dispute" arises. However, the plain meaning of Section 1(b) of Article I, Appendix H, is that once the 45-day period after the end of the emergency has passed, the abolishment becomes permanent, thereby triggering the additional procedure set forth in Appendix H. The Board's opinion is supported by Third Division Award 20628 between these very Parties involving similar contract language.

There the issue was as to when an emergency had ended. The Board held that:

> "Emergency does indicate a sudden happening and the need for precipitous action passes in a short time frame. Then after the emergency passes a longer period of corrective action may be needed. In the usual understanding that period is not best described as an emergency. Added impetus to the belief that the parties intended to measure the time for job restoration from the shorter 'emergency' period is found in the forty five day provision. That period, after the need for immediate action has passed, gives Carrier an opportunity to assess the situation and take appropriate action."

It is instructive to this dispute that the Board in Award 20628 added, "That action on this and other Carriers, has taken the form of recalling the employes to their positions and proceeding to abolish the positions under the non-emergency provisions of the Agreement'. The Carrier cites a 1978 letter between the parties as evidence that its reading of the contract has been the one followed in situations such as the one now before this Board. However, the facts considered in that letter are distinguishable from those in question here, and the letter does not establish a precedent for the resolution of this claim.

With respect to the monetary aspect of the claim, the record establishes that Claimants were paid under the applicable protective Agreement and thus have received compensatory benefits during the entire period of this claim, Under the circumstances there is no justification in the record for awarding the monetary part of this claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.