Award Number 332
Docket Number CL-265

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of R. M. Colin, G. W. Rutherford, G. E. Mansfield, J. W. Hogan, Anna Neilsen, Mabel Liddicoat, G. C. Rader, Alice K. Henning, George Yamashita, Herbert Gray, Minnie Belser, Gertrude Morris, Greta Nelson, F. M. Lindamood, C. A. Dalen, E. D. Schley, S. T. Dickey, L. F. Tyler, B. E. Howard, H. G. Kappler, C. S. Hurlburt, C. Parlato, Clarence Smith, Arthur Clough, G. R. Hughes, A. Santi, for actual wage loss of each as a result of having been laid off by the Carrier from their regularly assigned positions September 26th, 27th, 29th, and 30th, 1930."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein. (See Award 322.)

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Robert G. Corwin was called in as Referee to sit with the Division as a member thereof.

The employes involved in this claim worked in the District Store Department at Oakland, California. On Thursday, September 25, 1930, they were individually notified in writing that their positions were abolished and that they might exercise their seniority rights elsewhere. On Wednesday, October 1st, most of them were recalled to their former positions, the others a day or two later. On October 4th the same or similar positions were bulletined or "rebulletined," to use the word of the carrier, under protest. Whether they bid them back is not disclosed, but in a few days, the management announced that they had all been restored to their "former positions." One man Dickey bumped off a messenger, Dalen, on the 26th. The remainder did not exercise their rights within the four days they were out of service.

The management says that because it had closed mechanical and car department shops there was insufficient work on the clerks' positions abolished to keep their occupants busy. The real controversy in the case is as to whether the carrier when work becomes slack can temporarily abolish weekly guaranteed work for a few days in order to escape payments under the guarantee and thus avoid the rule. This Division in Awards 79 and 289 has definitely held that it can not and the facts upon which those awards were reached are so nearly identical to those before us that it is difficult for the Referee to understand why this dispute was deadlocked.

Perhaps it was because of some incidental issues which the carrier has injected and which we may dispose of briefly. It advises us that the names of some of the employes are misspelled. To that extent the claim may be corrected. That employee Hughes whilst awaiting an award has died. Unless the claim is revived by his administrator it should technically be denied. That some of the employes have left the service. In the absence of a revocation of the authority of the Brotherhood to represent them we would think that it could

recover in their behalf. That the claims were not personally presented. Such claims have been advanced by the organization ever since collective bargaining began, and the right to such representation has not been raised and was not in this instance until after the claims had been considered in conference. That the claims were not reduced to writing, nor promptly made. The carrier's action was protested in writing on September 25th, the day after it occurred, by the Chairman, who has been attempting to secure a settlement ever since. We cannot find any laches, as alleged, nor that the carrier which has resisted payment, has been prejudiced by the delay in which it participated. Rule 24, as we have held, applies to claims for overtime, etc., under Article VI, and not to those of this character and as we have also held it only requires the carrier to respond in writing, with its reasons, when written request is made. It is also urged that the positions having been discontinued, the employes should have minimized their loss by displacing others. This would have only led to claims of a different character. While the five days allowed for such actions had not ever expired as to most of them, if the carrier was not damaged by their inaction, it cannot properly advance it in defense of its procedure if irregular. It is almost obvious that all of them, even the management, expected a speedy return to their regular jobs.

The right of the carrier to abolish a position is recognized in all schedules but it is not, so far as we know, very definitely defined. It has always been recognized as existing when a reduction of force is necessary by means of the disappearance of work, except of a very temporary character, which the rules unquestionably contemplate. But it must be exercised with due respect to other rules, the reason for the enactment of which is to assure the employees some stability of employment. Clerks of the class involved in this dispute formerly worked largely on a monthly basis. Rule 3 of the schedule altered that but its concluding paragraph provides that the working days of employes covered shall not be reduced below six per week except by holidays. Evidently this was intended to guarantee the integrity of at least a week's employment, and provide that when, as in the present instance, the carrier elects to work its employes on four days of each week it cannot escape payment for six unless a holiday intervenes. While Rule 6 may not be applicable directly in the settlement of this dispute, the principle which lies behind it may be considered in interpreting Rule 3 and as affecting the propriety of abolishing a position during a part of a week. It provides that a position shall not be discontinued and a new one created under another name in order to evade the application of other rules. If a new position cannot thus be created it would certainly seem to follow that to rebulletin the same position under the same name cannot be justified. That was what the carrier did here under a claim of right. It consciously states that the positions were "rebulletined." Now they could not be rebulletined unless they remained the same. Newly created positions are "bulletined," Rule 33. And then the carrier adds that the employes were all restored to their "former positions," not new ones, but the old ones which it apparently intended they should always occupy and to which it recalled them even before the "rebulletin" was posted.

Without any prejudice to the right of a carrier to abolish a position when its purpose is not to evade the application of the weekly guaranty and other rules, we find that the facts in this docket before us are so essentially similar to those considered in the earlier awards cited that we feel we should follow them.

AWARD

Claim sustained, except in the case of Dickey to the extent of wages received, and in accord with the foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1936.