

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM.—

"Violation of rule 61 of current agreement by the carrier in reducing assigned days of work on the position of General Clerk at New Braunfels, Texas, below six (6) days per week on September 11, 12, 13, 14, 16, 17, 18, 20, 21, 23, 24, 25, 27, October 4 and 5, 1935. Shall W. M. Becker be paid regular wages on the aforementioned days?"

STATEMENT OF FACTS.—On July 19, 1935, the position of General Clerk at New Braunfels, Texas, was put on. On August 23, 1935, the employes requested the carrier to bulletin the position. The position was bulletined on August 27, 1935, Bulletin No. 688, and on September 1, 1935, W. M. Becker was assigned thereto.

The duties of the position, as shown on the bulletin of August 27, 1935, were:

"Must be familiar with all yard and station work. Weigh cars, make interchange reports, per diem, demurrage, bill all outbound freight shipments on billing machine and figure rates on same. Handle milling in transit. Must be able to use typewriter and other duties assigned by agent."

The bulletin stated that the position was assigned six (6) days per week.

From July 19, 1935, up to and including September 10, 1935, the position worked regularly six (6) days each week. For the four (4) weeks beginning September 8, 15, 22, and 29, the employe was withheld from the position a part of each week.

From October 7, 1935, until November 15, 1935, the position worked regularly six (6) days each week. On November 15, 1935, the position was abolished. The position was again put on in May 1936 and has worked regularly since that time.

On the days that the employe was withheld from this position his assigned duties were either performed by other employes or permitted to accumulate until the days he was allowed to work.

There is in evidence an agreement between the parties bearing effective date of December 1, 1926, and the following rules thereof are cited:

"VACANCIES—NEW POSITIONS, RULE 6

"(a) Seniority rights of employees to vacancies or new positions will be governed by the rules of this Article 3."

"BULLETIN, RULE 10

"(a) New positions or vacancies will be promptly bulletined in all offices, freight houses, stations, and storehouses on the district where the vacancy occurs in a place accessible to all employees affected for a period of five (5) days, and Division Chairmen will be furnished with copy. Bulletin must show location, title, hours of service, six (6) or seven (7) day position, and rate of pay.

and that the Division Chairman be furnished with a copy of such notice. In this instance the carrier did not give such notice, but merely withheld the employe from the position on certain days of the week.

The purpose of such rules as 10, 6-(a), and 19 is to insure proper recognition of seniority and uniform or standard handling of registered positions. In this case there was not a proper compliance with rule 19. The action of the carrier was a "reduction in days" and not a reduction in force. The company did not in fact abolish the position. It merely withheld the employe from the performance of duties which existed, and which by Bulletin No. 688 of August 27, 1935, were assigned to the position and the successful bidder.

Rule 61 of the agreement specifically states that positions shall not work less than six (6) days per week, except weeks in which holidays occur. Bulletin No. 688 of August 27, 1935, was issued in conformity with this rule and stated that the position was assigned six (6) days per week. This rule was incorporated in the agreement to prevent just such practices as were resorted to in this instance. A review of the evidence will clearly show that the carrier ignored this rule when it withheld the employe from his position from two (2) to five (5) days each week during the four weeks in question.

The blanking of a position of any day or days while the duties of such position still exist is an evasion of the requirements of Rules 6-(a), 10 and 19, and is in strict violation of Rule 61.

The duties assigned to this position were still in existence on the days the employe was withheld from the position. A portion of the work was performed on these days by other employes and such as could be left was permitted to accumulate. There was no noticeable decrease in the work assigned to this position by Bulletin No. 688 during the days the employe was withheld from this position. By referring to the record, you will readily note that the average outbound revenue and tonnage was greater on the days the employe was withheld from the position than it was on the days he was permitted to work.

The position of the employes is fully supported by Award No. 79, Docket CL-114 of this Honorable Board, also by United States Railroad Labor Board Decisions Nos. 572, 574, 764, 960, 1010, 1199, 1331, 1784, and 1932.

The employes further contend that since the action of the carrier was in violation of the rules mentioned, that Mr. Becker should be paid regular wages on the days mentioned and request your Honorable Board to sustain our claim.

POSITION OF THE CARRIER.—Carrier contends this was a temporary seasonal position of general clerk, as indicated by bulletin, to assist agent and other clerks with general duties and no necessity existed for continuing the position after September 10th, therefore, it was abolished and the remaining work carried on by the other regularly assigned forces at the station. The position was again restored October 7, 1935. After position was off nine days, Mr. Becker, then being on the extra board, was used on September 19th for extra work at the station and again on September 26th. He was again called to assist the regular force on September 28th, 30th, October 1st, 2nd, and 3rd to get out monthly reports.

OPINION OF THE BOARD.—The position in question was established by Bulletin No. 688, dated August 27, 1935, as a temporary position under the title of general clerk and an assignment of six days per week with no specified limitations as to the duration of the employment bulletined. Rule 19 of the agreement between the employes and the carriers, which defines the action by which carriers may reduce forces or abolish positions, requires appropriate action when positions are abolished or when a reduction in force is to be made. The fact that this claimant filed his intention of protecting extra work is not sufficient evidence that he received proper notice of his position being abolished. Proper notice would have been a written notice, either in the form of a posted bulletin withdrawing the position that had been formerly bulletined or a written communication to the employe affected as is indicated in the concluding paragraph of rule 19 and which reads, "Division Chairman will be given copy of such notice." The filing of intention to protect other work by the claimant can only be considered as a means of protecting himself with employment during the period that he was withheld from the position bulletined and to which he had been assigned in accordance with his seniority rights. Inasmuch as the position established by Bulletin No. 688, effective September 1, 1935, was not abolished in accordance with the provisions of rule

19, the carrier was not justified in withholding the claimant from his position until the bulletin had been properly withdrawn or abolished.

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 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 carrier violated the rules of the existing agreement.

AWARD

Claim is sustained subject to deduction of income earned as extra employe and to be determined in negotiation of the parties to the agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 15th day of April, 1937.