Award No. 3838
Docket No. CL-3797

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: .Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that carrier violated the Clerks' Agreement:

(1) When it failed and refused to permit E. Frericks, E. C. Heeb, G. J. Wamhoff, K. A. Ludwig and other Purchasing Department employes occupying positions regularly assigned six days each week, exclusive of Sunday, to perform work and be paid on May 24th and 25th, 1946, and

(2) When it failed and refused to permit Stockmen employed at Jefferson Ave. and 14th Street Store, occupying positions necessary to continuous operation and the relief Stockmen to perform work and be paid on May 23, 24, 25, 26 and 27, 1946, and

(3) That all involved employes shall now be compensated for wage loss sustained on such dates.

EMPLOYES' STATEMENT OF FACTS: On Monday, May 20, 1946 bulletin was posted over the signature of Purchasing Agent, Mr. H. A. Smith, reading:

"'Effective 5:00 PM Thursday, May 23, 1946 the following positions are abolished' and then followed list of the positions and the occupants thereof. Copy of said bulletin is attached as Employes' Exhibit 'A'.

Position designated 'Stockmen' Jefferson Store and 14th Street Store (see Exhibit 'A') are necessary to continuous operation of the carrier and worked seven days each week, 24 hours each day, prior and subsequent to the period involved in this claim. The other positions and employes involved are assigned six days each week Monday through Saturday, except that this number may be reduced in a week where a holiday occurs, as provided in Rule 45.

On Thursday, May 23, 1946 Purchasing Agent, Mr. H. A. Smith advised the Storekeeper at Madison Store that his bulletin of May 20th (Employes' Exhibit 'A') had been withdrawn so far as positions at that Store were concerned, and though positions at the Madison Store were not suspended as were other positions specified in the bulletin of May 20th (Employes' Exhibit 'A') some of the

position or positions to be abolished and the names of the occupants thereof. That was followed religiously by the posting of the Purchasing Agent's bulletin of May 20, 1946, referred to in the Statement of Facts, Exhibit A. This bulletin put all employes on notice to the effect that their jobs would be abolished and gave them ample time to place themselves in accordance with their seniority rights. Exhibit C, referred to in the Statement of Facts, shows just how the concerned employes did place themselves.

In Award 735, referring to Rule 19, the referee said that "it is necessary to abolish positions when reducing forces to give employes any rights under, or in fact any meaning at all to, the first sentence which is the very heart of this rule" and that "the record in this case shows that the positions held by the employes involved were not in fact abolished. They continued to exist and the employes returned to and assumed their respective duties on the positions after each lay-off." In the instant case the jobs were actually abolished in accordance with the rules and were actually rebulletined when they were restored.

In the General Chairman's letter of June 20, 1946, his claim is predicated entirely on an alleged violation of Rule 45 of the agreement which provides that nothing shall be construed to permit the reduction of work days below six per week. This Board has ruled on a number of occasions, summarized in Award 934 and reaffirmed in Award 1776, that the six-day or guarantee rule is applicable to "employes" and not to "positions". In other words, the guarantee is applicable only to an employe after he has acquired a position in the exercise of his seniority rights and continues while the position remains in existence. Rule 45 is not applicable to the circumstances involved in this claim, and is not a bar against force reduction properly bulletined under Rule 17. We did not reduce the work week of any employe. What we actually did was abolish some positions, an uncontested right of the carrier under Rule 17, titled "Reducing Forces", and the employes affected were permitted to place themselves in accordance with their seniority rights. Many Awards have been made holding that there are no restrictions upon carriers abolishing positions provided work is not taken from the craft entitled to it. The reason for the abolishment of the positions was that there was no work for the occupants to perform. When the need again became apparent, the same number of positions were reestablished and no overtime was worked by any employes following the restoration of the position, conclusively proving that the abolishment was proper. All of the positions in question were abolished in full compliance with Rule 17 and were reestablished by bulletin as provided in Rule 11. The question of the applicability of Rule 45, the guarantee rule, is in no wise involved in the present case because any effect that rule might have had ceased when the positions were abolished.

The circumstances in this case were no different than in any other involving reduction in force. Railroad business is not static and carriers must adjust their forces to meet changing conditions in order that prompt, efficient and economical service may be rendered our patrons. As stated before, we handled this case strictly in accord with what the Board, in Award 735, said we should have done. Therefore, there is no basis for any claim and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Teerminal Board of Adjustment claims the Carrier violated their Agreement when it refused to permit certain employes occupying positions regularly assigned six days per week to work on May 24 and 25, 1946, and when it refused to permit certain employes occupying positions necessary to its continuous operation to work on May 23, 24, 25, 26 and 27, 1946. It asks that all employes involved be compensated for wages lost by reason thereof.

The controversy here involved arises out of the situation that developed when the locomotive engineers and trainmen went on a nationwide strike at 4:00 P. M. on May 23, 1946. This strike suspended all train and yard service and practically all of the operations of this and all other carriers. The

strike ended on May 25, 1946. During this period the Carrier had the right to reduce forces if such right existed prior to its being taken over by the government. See Award 3680. Such right existed under Rule 17 of the parties' Agreement.

Because of the strike, the duration of which could not be predetermined, the work of the employes herein involved ceased. A Carrier can abolish a position when there is no longer work to be performed. See Awards 3680, 3682. Accordingly, on Monday, May 20, 1946, in accordance with Rule 17 of the Agreement, which rule requires such bulletin to be posted at least three days in advance of the effective date thereof, the Carrier posted its bulletin abolishing positions in its Stores Department, effective as of 5 P. M. on Thursday, May 23, 1946. Although eight of the positions abolished by this bulletin were subsequently withdrawn therefrom, it remained in effect as to the balance. The men so displaced were given freedom to exercise their seniority rights of displacement and some of them did so, although most of them were furloughed. The Carrier paid these men in accordance with Rule 17, which provides:

> "* * * employes affected will be paid up to the end of that period."

"Period" means the end of the time required before notice of reduction becomes effective.

All the abolished positions were re-established on May 27, 1946, by bulletins 173 to 186, inclusive, which were posted in accordance with Rule 11 of the parties' Agreement.

While it is true that a carrier cannot blank or suspend work on a position when the position has not actually been abolished (see Awards 3661, 3680, 3715), however, those awards are not applicable if the positions are actually abolished in accordance with the rules of the parties' Agreement. Here the Carrier actually abolished the positions involved for the reason that there was no longer work to be performed and it paid the employes affected in accordance with Rule 17 of the Agreement. This it had a right to do and did so properly. See Awards 735, 1776, 3680, 3682.

In view of the foregoing we find it unnecessary to discuss the Carrier's contention that the claim here presented is not the same as the claim handled on the property.

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.