Award No. 3884
Docket No. CL-3726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee.

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Buffalo, New York, when it required regularly assigned employes to suspend work on their regular positions claiming that the positions were abolished, and

That Carrier shall now reimburse employe F. G. Rohauer for one day's pay, May 11, 1946; F. Orlowski for one day's pay, May 10, 1946; F. Bondanza for two days' pay, May 10 and 11, 1946; E. Zwilling for three days' pay, May 10, 11, and 13, 1946; G. Schafer for four days' pay, May 10, 11, 12, and 13, 1946; L. M. Ransbury and J. A. Richards for three days May 10, 11, and 13, 1946, less compensation received, if any.

EMPLOYES' STATEMENT OF FACTS: L. M. Ransbury, seniority date, August 16, 1943 is the regular assigned incumbent of position of Comptometer Operator, rated $211.70 per month.

J. A. Richards, seniority date, July 8, 1921 is the regular assigned incumbent of position of Car Record Clerk, rate $7.80 per day.

F. G. Rohauer, seniority date, February 13, 1943, is the regular assigned incumbent of position of Yard Clerk, rate $7.90 per day.

F. Orlowski, seniority date, May 13, 1929 is the regular assigned incumbent of position of Yard Clerk, rate $8.15 per day.

F. Bondanza, seniority date, June 23, 1939 is the regular assigned incumbent of position of Yard Clerk, rate $8.15 per day.

E. Zwilling, seniority date, May 21, 1930 is the regular assigned incumbent of position of Yard Clerk, rate $8.15 per day.

G. Schafer, seniority date, February 10, 1940 is the regular assigned incumbent of position of Yard Clerk, rate $7.90 per day.

On May 7, 1946, the Carrier issued Roster "A", Bulletin No. 9 abolishing 43 positions, effective May 10, 1946. All of the positions supposedly

January 21, 1947
File 220.1-3
Item 209
Clerks 743

Mr. J. J. Schreur, General Chairman
Brotherhood of Railway and Steamship Clerks
Room 804 Public Square Building
Cleveland 13, Ohio

Dear Sir:

Referring to your letter December 10th, 1946, file 743, concerning claims filed on behalf of L. M. Ransbury, J. A. Richards, F. G. Rohauer, F. Orlowski, Frank Bondanza, E. Zwilling and G. Schafer, Buffalo, N. Y., alleging loss of work on May 10, 11, 12, 13, 1946:

These claims were considered at conference in this office January 17, 1946, at which time the record showed these positions abolished in accord with the agreement December 1, 1943.

There is no justification for these claims and they are denied.

Please acknowledge.

Yours very truly,

(Signed) P. W. Johnston
Vice President

OPINION OF BOARD: Each of the Claimants held a regularly assigned position under the Agreement. On May 7, 1946, the Carrier by bulletin announced that the position of each of the Claimants was abolished as of May 10, 1946. All of the Claimants were notified to report for work on their **former positions** effective May 14, 1946. Each of the positions was bulletined May 15, 1946, and these employes were assigned to their positions pending award to successful applicants.

The Carrier takes the position that the claims of these employes "involves only the managerial right to abolish positions"; that the Carrier complied with Rules 12 and 7 (i) as to bulletining the positions as abolished; that it also complied with Rule 11 by recognizing the right of Claimants to displace junior employes; that it complied with Rule 1 (c) and (f) as to the disposition of the remaining work; that it complied with Rule 7 (a) by bulletining the positions when re-established; and that, therefore, it has violated no rule of the Agreement by abolishing these positions.

All of these rules relied on by the Carrier are rules prescribing the **procedure** as to abolishing positions and must be complied with in every case. These rules, however, do not give the Carrier the right to abolish regularly assigned positions. The Awards relied on by the Carrier held that compliance with these rules was necessary.

In neither its original submission nor in any of its subsequent statements has the Carrier assigned any reason for abolishing these positions nor shown that the work of these positions had disappeared or been materially reduced.

In its original submission the Organization states that "these positions were supposedly abolished in anticipation of business declining due to the coal strike". This is the only inkling we have as to a suggested reason.

The Carrier apparently assumes that it can abolish positions at will so long as it follows the prescribed procedure. If this were true it could

abolish positions for a few days at a time and Rule 28, the Guarantee Rule, would avail the Employes nothing. Yet that Rule provides that:

> "**Nothing within this agreement** shall be construed to permit the reduction of days for regularly assigned employes below six (6) per week, except as follows: * * *." (Our emphasis.)

The Rule then lists three exceptions, none of which is applicable here.

Certainly, therefore, prescribing the procedure for abolishing positions should not be so construed as to permit the Carrier to abolish positions for a few days and thus destroy the effect of this Rule.

Rule 31 of the Agreement also provides:

> "Established positions will not be discontinued and new ones created under the same or different title covering relatively the same work, which will result in * * * evading the application of these rules."

The action of the Carrier in this case would seem to fall clearly within this Rule also. Here the Carrier followed the prescribed procedure for abolishing these positions. On the fifth day thereafter the employes were required to report for work on **their former positions.** We must assume that on that day they were required to report on their regular tour of duty on that day. On the next day the positions were bulletined as re-established or new positions. It is asserted by the Employes, and not denied by the Carrier, that the work of these positions was not materially reduced during this period; and that said work was either performed by others than Claimants or permitted to accumulate until their return.

If the Carrier is permitted to so abolish these positions and avoid payment for loss of time to these employes, its action would thereby "result in * * * evading the application of * * *" Rule 28.

In Award 439 this Division said:

> "In the opinion of the Board a carrier is justified in abolishing a regular full time position or positions and of substituting extra employes to carry on intermittent work of the same class, **when and only when** the duties of the position fall off to such an extent as to leave nothing for the employe to do during the majority of hours or days of his employment and for a reasonably sustained period." (Our emphasis.)

In Award 607 this Division said that the practice of discontinuing of positions having full eight hours of duties and the reassignment of such duties to others "would completely nullify the wage agreements".

See also Award 1459 on abolishing position where work remains and Award 3557 on violation of rule similar to Rule 31.

It is a prerogative of management to abolish a position where the work of the position has disappeared either entirely or substantially. In doing so it must follow the procedure prescribed by the Agreement. If, as here, the work of the position remains, the Carrier may not validly abolish the position even though it strictly follows the prescribed procedure.

The Carrier assumes that the positions here were **in fact** abolished because the proper forms were used. That does not follow. First, at least a substantial part of the duties of the position must have disappeared and second, there must be the actual intent to abolish the position. The Carrier may not use the prescribed procedure for abolishing positions for the purpose of evading its Agreement with the Employes.

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

The Carrier violated the Agreement as claimed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.