Award No. 4661
Docket No. CL-4674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Carrier violated Rule 12 (c), second paragraph, when they discontinued the position of Check Clerk at the Sioux City Freight House on June 3, 1947.

That employe R. E. Braband be compensated at the difference between what he earned as Stower and what he would have earned as a Check Clerk for June 4, 6, 7, 9 and 11, 1947, and employe H. Angley be compensated the difference between what he earned as Stower and what he would have earned as a Check Clerk for June 5, 10 and 12, 1947.

EMPLOYES' STATEMENT OF FACTS: Under date of January 16, 1947, the Carrier issued Bulletin No. 6 advertising position of Check Clerk, position No. 801, rate $8.04 per day, at Sioux City Freight House, Sioux City, Iowa. Employe Alfred E. Pauley was assigned to that position.

On June 3, 1947, the following assignments, among others, were in effect:

Occupant	Position No.	Title
A. E. Pauley	801	Check Clerk
E. J. Manley	734	" "
R. E. Braband	Vacation Relief	" "
H. Angley		Stower

On May 24, the Freight House Foreman verbally notified employe Pauley that his position (No. 801) would be abolished at the close of the assignment on June 3, 1947, thereby giving the employe 48 hours' advance notice. Following notification by the Foreman, Pauley displaced Manley, who displaced Braband. Braband returned to a Stower position.

On June 4, 6, 7, 9 and 11 the four employes worked as follows:

Occupant	Position No.	Title
A. E. Pauley	734	Check Clerk
E. J. Manley	Vacation Relief	Check Clerk
R. E. Braband		Stower
H. Angley		Stower

The Carrier desires to point out that we have a case here where the Organization is making a claim for two employes for the difference between the stower's rate of pay and the check clerk's rate of pay in connection with abolishment of a position to which neither one was assigned at the time of its abolishment. Both employes in whose behalf this claim is submitted, at the time of this occurrence were regularly assigned as stowers, although occasionally worked extra as check clerks.

The fact that a notice was not posted on the bulletin boards until after Position No. 801 had been abolished had no effect whatever on the Claimant's rights to hold a Check Clerk's position after Position No. 801 had been abolished. In other words, had the notice been posted on June 3d instead of June 11th the result would have been exactly the same. Employe Pauley would have displaced Employe Manley and Employe Manley in turn would have displaced the Claimant, and the Claimant would have returned to his regular position as a stower.

As indicated above, it is the Carrier's policy to post such notices, so far as possible, in advance of the abolishment of a position. However, certainly your Honorable Board will agree there is nothing in Rule 12 (c) which places any obligation upon the Carrier to do this. If the rule intended that such notices must be posted in advance of or not later than the date a position is abolished the rule would so state.

It is the Carrier's position that there has been no violation of the agreement; that the claim is without merit and should be denied.

OPINION OF BOARD: The essence of this controversy lies in a definition of the word "when", the first word in the opening sentence of the second paragraph of Rule 12 (c) of the Agreement, effective January 16, 1946. The applicable paragraph reads:

> "When bulletined positions are abolished, notice will be placed on all bulletin boards in the seniority district affected . . . Such bulletin notice shall include the names of employes filling the positions abolished at the time abolished."

The facts are not in dispute. On January 16, 1947, Alfred E. Pauley bid in and was assigned bulletined position No. 801 at Sioux City Freight House, Sioux City, Iowa.

On May 24, 1947, the Freight House Foreman notified Pauley that his position, No. 801, would be abolished at the close of the assignment on June 3, 1947, thereby giving the employe 48 hours advance notice required by Section (a) of Rule 12.

The bulletin announcing the abolishment of this position was posted at Sioux City on June 12, 1947. It was prepared in Mason City, Iowa, and signed by the Superintendent.

The Organization contends the bulletin should have been posted in advance of the abolishment of the position; the Carrier contends that the letter and spirit of the rule was observed by its action in posting the bulletin within a reasonable period of time after the position was abolished. We think neither position is tenable under the rule in its present form.

It has been contended for the Carrier that the Superintendent's office is in a different city from the instant freight house and that such a requirement tends to work a hardship on the Carrier. It seems to us that if either the Freight House Foreman, who gave Pauley verbal notice of the abolishment of his position at Sioux City, or the Agent there, has authority to abolish a position without previous consultation with or approval of the Superintendent at Mason City, it may be presumed they have equivalent authority to sign and post a bulletin to that effect. It is a widely accepted rule of sound management that authority should coexist with responsibility.

If they do not have such authority but must get advance permission from the Superintendent at Mason City, then the Superintendent himself or his office is on notice at least 48 hours in advance of the local action by the foreman or agent and therefore has ample time to prepare the notice and have it posted at the time "when" the position is abolished. At any rate the determination to abolish a position lies wholly within the discretion of the management as well as when, i. e., at what time to do it.

In the light of the effect the abolishment of positions is likely to have and actually does have on employes in many cases, even to the point of separating some of them, not occupying the abolished positions, from other positions as they are affected by the bumping process, we think this is not an unreasonable request. We think when means "at the time", "at which time" or "as soon as" or as nearly simultaneously as events of that character can be coordinated. For the purposes of our conclusion here that the Agreement was violated we think this is what the language, as it now appears in the rule, means and requires.

We are aware of the limitation the Board has placed upon itself in Awards Nos. 1248, 1589, 2202, 2491, 2612, 3407 and 4259, cited in behalf of the Carrier, with respect to modifying Agreements by interpretation or reading into them meanings that are not likely to have been contemplated by the parties. We feel confident that the interpretation that we have put upon the key word "when" in Rule 12 (c) is not in conflict with that doctrine.

On the question of penalty, which will be assessed as we sustain the claim, we only affirm what this Division already has said on this point in numerous awards, among them Awards Nos. 1646, 3890, 4370 and 4539. Harsh though they may appear to be, they are only incidental to the violation.

We conclude the Agreement was violated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of December, 1949.