

**Award No. 4675**

**Docket No. TE-4751**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Mortimer Stone, Referee**

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**PARTIES TO DISPUTE:**

**ORDER OF RAILROAD TELEGRAPHERS**

**BOSTON AND MAINE RAILROAD**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Order of Railroad Telegraphers on the Boston and Maine Railroad:

(1) That the Carrier violated Articles 3 (a), 4 and 9 of the Telegraphers' Agreement, when, on March 28, 29, 30 and April 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12 and 15, 1948, it improperly suspended Mrs. Harriet M. Marsh, Assistant Ticket Agent, North Station, Boston, Mass., during her regular hours, without pay; and

(2) That as a consequence Mrs. Harriet M. Marsh, who was improperly deprived of her usual employment by the Carrier on the days involved by being improperly suspended during her regular hours, who was ready for service and not used, shall be reimbursed for the wage loss on the days involved as a result of this improper act of the Carrier.

**EMPLOYEES' STATEMENT OF FACTS:** On account of a threatened coal strike, on March 28, 1948 the position of Assistant Ticket Agent, North Station Ticket Office, Boston, Mass., with hours 3:45 P.M. to 11:45 P.M., owned by Mrs. Harriet M. Marsh, was abolished by Bulletin No. 83, posted in the Ticket Office. Bulletin was signed by J. E. Hatchell, Ticket Agent.

On April 16, 1948, Mrs. Marsh was recalled to the service, put back to work on her old position, with same hours, same rate of pay, and same rest day without this position being readvertised for bids.

During the time of her lay off her work was covered by other employees in the North Station Ticket Office.

At the time of her so-called abolishment there was no Auditor's check made of her ticket case or money, nor was there any made when her position was reestablished.

**POSITION OF EMPLOYEES:** Mrs. Harriet M. Marsh was employed in North Station Ticket Office, Boston, Mass., as an Assistant Ticket Agent, handling a Local Ticket Window, having her own Ticket Case and Bank (cash for change).

When the threatened coal strike in March 1948, which never came to a head, loomed up, the Carrier started to take advantage of this and Mrs. Marsh was notified on March 28, 1948 by Bulletin No. 83 that her position as Local Assistant Ticket Agent was abolished: this posted in North Station

ment, it is quite persuasive that the Carrier was trying to benefit itself by 'abolishing' the positions and at the same time protect itself by exercising its powers as employer against loss and delay in resuming operation when and if the strike ended. That the Carrier may abolish the position when work stops must be conceded, but the abolishing of the position must be actual and have the effect of removing the occupant from the service of the Carrier until such time as he may voluntarily exercise his seniority to another position if such right exists. The abolishing of a position can be accomplished with plain and simple language, and when, as here, qualifying directions and instructions are included, it is evident that the Carrier intended in fact something other than to eliminate the position absolutely." (Emphasis ours).

Carrier asserts without fear of contradiction, that Bulletin No. 83 could hardly have been more "plain and simple". No "qualifying directions and instructions" were included. The Claimant's position was abolished completely, totally and irrevocably in accordance with schedule rules and Carrier's undoubted right to "abolish the position (s) when work stops", but Petitioner requests that Carrier, after having carefully complied with all schedule rules affecting the abolishment, now pay Claimant for work not performed when no such penalty appears in current agreement even if it had been violated.

Petitioner has also asserted that "no Auditor's check was made of her ticket case or money" at the time of the abolishment nor when her position was re-established. Carrier categorically asserts that Petitioner as a contractual representative of Claimant is without vested interest in the stated phase of Claimant's relation with Carrier. Whether or not an "audit" is or is not made is purely a managerial prerogative. For the information of the Board, however, Carrier will say that Claimant was instructed to and did turn in her cash before leaving the active service of the Carrier at the close of work on March 27, 1948. A check of her ticket case was made in the usual order on or about the first of the subsequent month (April). This is the customary practice on the Carrier's property. Everything having been found in order, when Claimant was recalled to active service on a new position, funds were issued her as is customary with new employees.

### SUMMARY

Carrier has conclusively shown that the position held by Claimant was abolished by Bulletin No. 83 on March 28, 1948. There was nothing ambiguous with respect to the aforesaid bulletin. Claimant had sufficient seniority to have exercised displacement rights and thereby remained in active service. Claimant did not attempt to exercise displacement rights because she was not qualified or competent to fill the position held by her junior. Claimant, therefore, became a furloughed employee on March 28, 1948. By occupying the status of a furloughed employee Claimant did not come within the scope of Articles IV and IX, invoked in support of the claim, since these Articles apply only to employees holding regular positions and the Claimant held no position.

Carrier freely admits violation of Article XII (a) but has shown that Claimant was not damaged by Carrier's failure to comply with this Article and, in fact, may have benefited thereby.

There is no justification for the imposition of the penalty requested by Petitioner either under the rules of the controlling agreement or in equity.

The claim should be denied.

(Exhibits not reproduced).

**OPINION OF BOARD:** Threatened coal strikes having induced a falling off in traffic, Carrier by notice duly posted abolished the position of Assistant Ticket Agent North Station, Boston, Mass. held by Claimant on March 28, 1948, and this work was handled by other assistant ticket agents. Nineteen days later Claimant was called and put back to work by the Carrier at the same

work, same hours, same rest day and same rate of pay as before and without any new position being advertised for bids. Compensation is claimed for the period she was laid off under Article IV, the Guarantee Rule, of the Agreement and Article IX providing that employees will not be required to suspend work during regular hours or to absorb overtime. Carrier denies violation on the ground that the positions had been regularly abolished, but admits violation of Article XII (a) of the Agreement:

"(a) Employees will be advised within five (5) days of all permanent vacancies or new positions covered by this agreement by notice sent to each office, stating hours of service, days per week and salary. Applications for such vacancies or positions shall be received for ten (10) days after date of advertisement and the successful applicant and the Local Chairman shall be advised. The successful applicant will be placed on the position within twenty (20) days after vacancy occurs."

The question involved is whether or not the position was in fact abolished, or, to phrase it differently, whether Claimant now occupies her old position or a new position.

This Board said in determining Award No. 4170: "If the positions had been abolished they could only be brought back into existence as new positions. Rule 5 (a) of the Agreement requires that all new positions \* \* \* \* shall be bulletined. This is an essential to the establishment of such new positions." We find no escape from the logic of that statement, and, as we have seen, a similar rule prevails here. To what position did claimant return? Not to a new position because none had been established. Where could she look for the name, or salary, or hours of service or days per week of her position? Only to the posted notice and award to her of the old position.

From these considerations we must conclude that Claimant's old position had not been abolished; that she had in effect been suspended from it, and that thereby the Guarantee Rule had been violated.

**FINDINGS:** The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 Agreement.

#### AWARD

Claims 1 and 2 are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1949.