Award No. 4762
Docket No. TE-4565

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company, that the Carrier violated Rules 2, 4-(c) and 29-ninth paragraph of the prevailing telegraphers' agreement, when, on March 24, 1948, the Carrier declared abolished the third trick operator-leverman position in the Jacksonville, Illinois tower because of an alleged emergency although the work of the position remained to be performed, and continued to violate the agreement in this respect until the above mentioned position was restored on April 14, 1948.

That the regularly assigned incumbent of the above mentioned third trick position shall be restored to his former position; that all other employes who were resultingly displaced from their regular positions by the improper act of the Carrier shall be restored to their former positions and be paid a time and one-half and expenses under Rule 21 on each day they were forced to work on positions other than their own during the period involved; and that all extra employes who were thereby deprived of work during the period involved shall be paid for the wage loss thus suffered.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date June 16, 1944, as to rules of working conditions is in effect between the parties to this dispute. The Jacksonville, Illinois tower is a continually operated interlocking-telegraph office, and is joint with the Chicago, Burlington & Quincy Railroad. Three consecutive tricks of operator-leverman are maintained at this office.

On March 22, 1948, the Superintendent of the Chicago, Burlington and Quincy Railroad notified the operator-levermen at this office by telegram that effective 7:00 A. M., Wednesday, March 24, 1948, the third trick operator-leverman position would be discontinued during an emergency. On the same day, March 22, 1948, the Chief Dispatcher of the Gulf, Mobile and Ohio Railroad, notified the operator-levermen at this office by telegram that effective March 24, 1948, the third trick operator-leverman position at this office was abolished and directed the regularly assigned incumbent of this position to exercise his seniority which he did by displacing on the second trick position in the same office. Resulting displacements then took place among other employes thus affected.

The work of the third trick position thus declared discontinued and/or abolished in an alleged emergency was not discontinued or abolished in fact

on assignments away from their home station they shall also be allowed actual necessary expenses while away from their home station."

The clear and unambiguous language of this rule precludes its application in this dispute. In order for this rule to have application in the present dispute, it must be shown that the employes involved were temporarily taken off their assignments by the Carrier and also that they were required by the Carrier to perform relief or emergency work on other assignments. Such a condition does not exist in this case. None of the employes who were affected by the abolishment of the third trick position at Jacksonville were taken off their assignments by the Carrier under the circumstances clearly contemplated and provided in Rule No. 21. The employes who were affected by the abolishment of this position voluntarily placed themselves on other positions in accordance with their seniority rights under rules of agreement and without any direction or authorization by the Carrier. Rule No. 21, therefore, is limited in its application to employes who hold a regular assignment and who are arbitrarily taken off such regular assignments by the Carrier and required by the Carrier to temporarily perform relief or emergency work on other assignments. The rule has no application whatever to changes caused by the abolishment of any positions, resulting in employes affected by the change voluntarily placing themselves in accordance with their seniority rights. The rule affords no support whatever for the claim of the employes.

In their Statement of Facts, the Employes make reference to alleged notice from the Superintendent of the Burlington Railroad to the third trick operator-leverman that his position would be discontinued effective March 24, 1948. The Carrier does not know what purpose was in the minds of the Employes in making reference to such alleged notice from the Burlington Superintendent. As has been stated hereinbefore, the Jacksonville interlocking plant is operated and maintained by this Carrier. The Operator-Levermen are employed by and carried on the payrolls of this Carrier. They are also covered by agreement between this company and The Order of Railroad Telegraphers. The Employes and their representative have always known that the Operator-Levermen at Jacksonville work under the directions of this Carrier. Also they have always known that any of the positions in the Jacksonville Tower could be abolished only by notice to the employes by this Carrier's Officers. Any advice from an officer of the Burlington Company in respect to the abolishment of any of these positions would not be a proper notice under rules of agreement between this Carrier and its employees and would, therefore, be of no force or effect. All of this is well known to the Employes. Therefore, any information that may have been given the third trick Operator-Leverman by an officer of the Burlington Company would not be a notice under rules of agreement, and, would, therefore, be immaterial and have no bearing in the dispute.

The claim is not supported by rules of agreement or past practice, and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: At Jacksonville, Illinois, the single track main line of Carrier crosses the single track main line of the Chicago, Burlington and Quincy Railroad. An interlocing plant is maintained at this crossing, and in March, 1948, three regular assignments as Operator-Levermen were maintained there. The Carrier operated no regular trains through Jacksonville between 11:00 P.M. and 7:00 A.M., and except for an infrequent extra train, the operation of the plant by the third trick Operator-Leverman was for the movement of Burlington trains.

Because of a nation-wide strike of coal miners, the Burlington advised the Carrier its business was reduced to such an extent that regular train service was being discontinued through Jacksonville during the period 11:00 P.M. to 7:00 A.M. daily. Accordingly, the regular assigned third trick Operator-Leverman, by notice to him on March 22, 1948, was informed that the third trick position was being abolished effective March 24, 1948. Mr. H. A. Stone was the third trick employe and he exercised his seniority rights under the

Agreement and made displacement on the second trick; other employes affected placed themselves in accordance with seniority rights. The third trick position was reestablished on April 14, 1948, and Mr. Stone placed himself on the reestablished position by exercise of his rights under Rule 10(g).

The Employes contend that the work on the third trick position declared abolished was not discontinued or abolished in fact, and was performed intermittently by the first and second trick employes and by the regularly assigned relief employe on a full time basis. They base their claim on a violation of Rules 2, 4 and 29 by the Carrier. The parties agree that the Carrier has the right to abolish positions when the work of the position has ceased to exist. Therefore, the question here is whether the work on the position had in fact ceased to exist. The record indicates that the first trick employe worked four hours on April 11, 1948, worked one call on April 12 and 13th, 1948, during third trick hours. The second trick employe worked one hour and fifteen minutes on March 28, 1948, one hour on April 4, 1948 and 30 minutes on April 10, 1948, during the third trick hours. The regular assigned relief employe worked the position on each relief day during the time in question. During the time in question, 19 days elapsed and on three of these days, the position was worked 8 hours by the regular assigned relief employe, and on six other days, the position was partially worked by first or second trick employe.

The Carrier states that the regular relief employe was worked on the rest day of the position at the request of the General Chairman and the General Chairman denies making any such request and, to the contrary, states that he told the Carrier he would file a claim if the regular employe position was abolished. There doubtless was no meeting of the minds as to the claimed oral agreement. Confusion as to what was agreed upon could have been avoided if the conversation and agreement reached had been reduced to writing. From the facts before us, it is our opinion that the work on the position in question had not diminished substantially enough to allow the Carrier to abolish the position, and that its action violated the Agreement.

The second paragraph of the claim is in behalf of all the employes who were affected by the displacements which took effect, and is in three parts. The first part requests that the regularly assigned incumbent of the position in question shall be restored to his former position and all other employes displaced be restored to their former positions, and it will be sustained. The second part requests that all said displaced employes be paid at time and one-half and expenses under Rule 21, on each day they were forced to work on positions other than their own. This is not a penalty claim, but a claim for compensation based on a specific rule of the Agreement, and it must stand or fall on the meaning of that specific rule, which reads:

"Rule 21. (Relief or Emergency Work Away from Home Town.)

Regular assigned telegraphers who are taken off their assignments to perform relief or emergency work on other assignments coming under this agreement will be compensated at the rate of time and one-half on the basis of the assignment filled, and if so used on assignments away from their home station they shall also be allowed actual necessary expenses while away from their home station."

In order for that rule to have application in this dispute, we must find that the claims were taken off their regular assignments by Carrier to perform relief or emergency work. The facts are that the regular incumbent of the third trick was taken off his regular position when the Carrier attempted to abolish the position. He was not assigned another position to perform relief or emergency work. The notice abolishing the third trick position stated that "the man affected will place himself in office if seniority permits". Seniority did allow him to displace second shift and the resulting displacements were not requested or even suggested by the Carrier, but were the result of voluntary use of seniority rights. It is true that the Carrier attempted to abolish the position by reason of a decrease of work on the position caused by a coal strike. That emergency did not require the Carrier to take positive

action of relieving a regular assigned employe from his position to perform relief or emergency work on another assignment. The strike resulted in a reduction in work and caused the Carrier to take the negative action of reducing forces. Rule 21 of the Agreement does not apply to the facts as presented in the instant claim, and the claim for compensation based on Rule 21 will be denied.

The third part of the claim is a penalty claim for compensation on behalf of all extra employes deprived of work during the period in question because of the Carrier's action and that they be paid for wage loss thus suffered. We have held that the action of the Carrier violated the Agreement and it follows that it must pay at pro rata rate the wage loss of all extra employes which resulted from its action, and the third part of the second paragraph of the claim will be sustained.

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 Agreement as per Opinion.

AWARD

Claim sustained in part as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.