Award No. 5529
Docket No. TE-5329

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

(a) The Carrier violated the prevailing agreement between the parties when, on or about March 19, 1949, it declared abolished positions of many of its employes covered by said Agreement, and improperly suspended such employes from their assigned positions during regular hours, and refuses to compensate such employes for wage loss suffered on the day or days on which they were thus laid-off and improperly suspended from work during regular hours, and

(b) That each employe who was thus improperly deprived of his or her usual employment by the Carrier, by being improperly suspended during his or her regular hours, and who was ready for work and not used, on one or more days — as shown by Employes' Exhibits "A", "B" and "C" attached hereto and made a part hereof, together with any others of record so suspended — shall be reimbursed for wage loss suffered as a result of this improper act of the Carrier.

EMPLOYES' STATEMENT OF FACTS: There is an agreement as to rules of working conditions and rates of pay, bearing date November 1, 1946, in effect between the parties to this dispute.

Because of a strike by train and engine service employes on the Wabash Railroad, the Carrier, on or about March 19, 1949, without conference or agreement with the General Committee of The Order of Railroad Telegraphers, served notices on many of its employes covered by the agreement between the parties; declaring abolished their positions, and suspending said employes from work during regular hours on one or more days when said employes were available and ready for service.

The following quoted telegrams are samples of the type notices the Carrier served on the employes it suspended from work on the days in question:

work to be performed by the occupants of such positions. The rules of the aforementioned Agreement do not, in any manner, restrict the right of the Carrier to abolish positions. The Carrier's position in this connection is fully substantiated by this Division's Award No. 1101 involving the same parties as are now before the Board.

The second Note to Rule 16, Paragraph (e), of the Agreement quoted on page 12 of this submission clearly contemplates that positions may be abolished and then reopened within sixty (60) days and makes provision for the return of the employes, thus displaced, to such positions when reopened. Employes, whose positions were abolished on or about March 19, 1949, were not permitted to exercise seniority rights and displace junior employes in accordance with the provisions of Rule 16, Paragraph (e), of the Agreement solely because of, and in compliance with, the understanding had with, and at the request of, the duly accredited representatives of the employes.

The claim purported to be described in the Employes' letter of September 12, 1950, quoted on pages 1 and 2 of this submission, is vague, indefinite and general to the point of being hypothetical, in that it does not present a claim or grievance on behalf of any particular individual or individuals for any specified date or dates and, therefore, does not describe a dispute between this Carrier and an employe or group of employes. The Carrier, therefore, is unable to state whether or not the alleged claim or claims the Petitioner intends to submit to this Board has (have) been handled on the property by and between the representatives of the parties in the manner required by the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board.

(Carrier's exhibits not reproduced.)

OPINION OF BOARD: A strike between operating brotherhoods against this and other carriers on March 15, 1949, brought about a cessation of operations of the carrier.

On March 19, 1949, the carrier served notice on many of its employes covered by the Telegraphers' Agreement, purporting to abolish their positions. The notices served were in the following form:

"Effective the close of assigned hours today, March 19, 1949, the position of ..... and ..... is abolished."

Upon termination of the strike, the carrier on or about March 22, 1949, issued instructions to employes previously notified that their positions were abolished to return to and resume work on their regular assignments. These notices in form read:

"
..... resume third trick .....
tonight."

The organization charges that the employes in question were improperly suspended from their assigned positions during regular hours.

At the outset, the carrier claims that the organization failed to give due notice to the claim or claims which they intended to submit to this Board, and that the claim or claims are not described in sufficient particularity to enable the carrier to determine with any degree of certainty what the claims are and the conditions which it is required to make answer to before the Board.

The record shows that there had been an exchange of correspondence between the carrier and the organization on the property prior to the time the claim was filed with the Board of such a character that the carrier was clearly put on notice of the organization's claim. We have carefully considered the contention which the carrier has made and in our opinion it is without substance, and this Board has jurisdiction to consider the matter.

With reference to the merits of the claim, the organization relies on Rule 3—Basic Day—Starting Time, Rule 5—Overtime and Call, Rule 7—Mediation Agreement A-2070. The organization contends that Rule 3(a) was violated by the carrier when it laid-off the employes and denied them the right to work the basic day of their assigned positions on the days in question, that Rule 3(b) was violated because the employes were not allowed to start work on the day of the fixed starting time thereof, that Rule 5(d) was violated because employes were arbitrarily suspended during regular hours under the guise of "abolishing their positions", that Rule 7 was violated in that employes were not given a rest day and relief was not provided and that Rule 7 relating to rest days was likewise violated.

The carrier relies primarily on Rule 16(e) of the Agreement, which because of its importance in this case is set forth as follows:

> "(e) In the event a position is abolished, or an employe is displaced, the employe affected shall be transferred to the extra list and shall have the right, if seniority and qualifications are sufficient, to displace one (1) of the three (3) youngest regularly assigned employes on the seniority district, except that in the event a trick in any office is abolished, the junior employe in point of seniority in such office shall be transferred to the extra list and shall have the right, if seniority and qualifications are sufficient, to displace one (1) of the three (3) youngest regularly assigned employes on the seniority district. Notice of exercising displacement rights as provided by this rule must be made to the Chief Dispatcher within forty-eight (48) hours from the time an employe is displaced account of the abolishment of his position or for any other reason.
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> Note: In the application of this paragraph, if a position of non-telegraph agent or exclusive leverman is abolished, or a non-telegraph agent or exclusive leverman is displaced, if the employe involved is not a qualified telegrapher, he may, if seniority and qualifications are sufficient, displace one (1) of the three (3) youngest regularly assigned employes holding a position of non-telegraph agent or exclusive leverman on the seniority district.
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> Note: In the application of this paragraph, it is understood that if a position is abolished or an employe is displaced while on leave of absence or vacation, the forty-eight (48) hour period within which he must exercise displacement rights will run from the time the employe involved reports for duty at the expiration of his leave of absence or vacation period.
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> If a position is abolished and reopened within sixty (60) days, the employe so displaced will have the right to return to the position if he so desires."

It relies particularly on the last paragraph thereof, which in effect provides that where a position is reopened within 60 days after it has been abolished, the claimant dismissed will have the right to return to the position if he so desires. This provision makes unnecessary, so far as the former incumbent is concerned, the bulletining of a position upon its reopening, if the position is reopened within 60 days.

The carrier also refers to two discussions held preceding the issuance of the notices abolishing the position. It contends that the situation was discussed between the chief dispatcher and the general chairman of the organization, and that this consultation occurred a day prior to the time the notice was issued. It is asserted that the general chairman told the chief dispatcher that "he would not permit any bumping nor would he request positions to be bulletined when the strike is over and positions restored as he figured it would only be a short duration and all employes would return to their respective positions, which were handled according to his request."

The second discussion was between the chief dispatcher and the local chairman of the organization on the Moberly Division, held on March 20, 1949. A memorandum was made of this discussion, signed by the parties, reading as follows:

> "Agreement between Local Chairman Binney and Cox of Telegraphers this morning.
>
> It was agreed that the 48 hour rule with respect to displacement will be set aside for the time being and operators given until Wednesday or Thursday March 23, 24 in which to make bump if necessary. If the train and enginemen resume work Tuesday or Wednesday or Thursday, no bumps will be permitted and each and every man return to his assignment."

The organization contends, with reference to the first discussion, that the chief dispatcher called the general chairman on the telephone the day before the employes were to be suspended from work. The general chairman stated that he did not consider that these positions were being abolished. The men were merely being sent home or suspended until the trainmen's strike was over. He did not consider Rule 16(e) involved in any way and protested against the contemplated action of the carrier. He further informed the chief dispatcher that if the proposed suspension was to be carried out, he protested against bumping and insisted that the employes retain rights with respect to their respective positions.

With reference to the second discussion evidenced by the memorandum, the organization contends that the understanding was null and void in that such agreements between the carrier and division chairman cannot serve to modify the terms of the controlling Agreement between the carrier and the organization. The organization relies in this respect on Award No. 2585.

Issues similar to those involved in this dispute have been considered many times by this Division and are the subject of many Awards. It is unnecessary to analyze the numerous Awards which have been cited by both parties. The controlling question in every case is whether there was a bona fide abolishment of the position. This involves an examination of the language of the notices abolishing the position in the first instance and the conduct of the parties following the giving of notice of abolishment. There can be no question but that the notices given in this case involved no equivocation. They are direct, simple and to the point. The positions were abolished without qualification.

The organization seems to rely heavily on the fact that the employes were ordered returned to their positions within three days after the positions were abolished. This action, it says, indicates that the carrier never intended to abolish the positions in the first instance, and that therefore there was no abolishment within the rules, but instead a suspension of the employes. The carrier meets this contention in two ways. First, by reference to the understandings we have referred to above between representatives of the carrier and the organization; and second, by reliance on the provisions of Rule 16(e).

There is no direct conflict between the organization and the carrier as to the conversations with the general chairman, although his own statement would indicate that there was a conversation. The statement also indicates that both parties apparently carried away different impressions. While there was an agreement that there would be no bumping or bulletining, the carrier representative came away with the impression that the organization had no objection to its procedure of abolishing the positions, and the organization representative apparently believed after the discussions were concluded that there would be no abolition of the positions as such. However, there is little point to weighing this evidence nor in passing upon the organization's con-

tention that the memorandum of the discussion between the carrier's representative and the organization's representative on the Moberly Division should be considered null and void.

As we see this case, the provision of Rule 16(e) which authorizes the carrier after a position is abolished to reinstate the displaced employe if the position is reopened within 60 days, is controlling. This provision clearly authorizes the carrier to do what it did in this case; namely, to reinstate the employes to their former positions after the short intervening period between the strike and the notice to return to work. The carrier's actions pursuant to this provision cannot be interpreted as negativing the intent to abolish the positions expressed in the notices of abolishment. Under the provisions of Rule 16(e), the carrier was not required to bulletin the positions and its failure to do so is of no consequence.

For Awards setting forth the applicable principles, see Awards Nos. 1101, 3841, 3889, 4389, 4455, 4787, and 5074. It is our opinion that the claim is without merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of October, 1951