Award No. 5779
Docket No. CL-5701

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that:

(1) Carrier violated the rules of the Clerks' Agreement when on May 10, 1950, it issued individual notice to all employes in the Local Freight Office, Warehouse, and Yard at Denver, Colorado, that their positions would be terminated (abolished) with the close of their tour of duty May 11, 1950.

(2) Affected employes E. J. Bucelloni, et al,* be compensated for wage losses sustained during period May 12 to 15, 1950, inclusive.

EMPLOYES' EXHIBIT "A"

STATEMENT OF EMPLOYES KNOWN TO THEIR REPRESENTATIVE ON WHOSE BEHALF CLAIM WAS FILED FOR WAGE LOSSES SUSTAINED AS SET FORTH IN SECTION 2 OF OUR "STATEMENT OF CLAIM."

(This claim is not all inclusive. Such information can only be obtained by a joint check with Management if and when the Board sustains our claim on behalf of all of the employes.)

Name	Position to Which Assigned	Time Lost Days or Hours	Date	Rate of Pay	Amount
Bucelloni, E. J.	Caller	8 hrs.	5-12	$ 1.38	$11.04
"	"	8 hrs.	5-15	1.38	11.04
Bumpus, J. R.	Stower	8 hrs.	5-12	1.38	11.04
"	"	8 hrs.	5-15	1.38	11.04
Carabetta, M. N.	Caller	8 hrs.	5-12	1.38	11.04
"	"	8 hrs.	5-15	1.38	11.04

*To the best of our knowledge the involved employes are those listed in Employes' Exhibit A attached and by this reference thereto made a part hereof. In event, however, there be other employes similarly involved that suffered wage loss by Carrier's action, the phrase "et al" shall include such others.

In view of the facts in this case, the emergency provisions of Rule 17, Paragraph (c), and your Board's Awards as mentioned, request that this claim be denied.

(All exhibits not reproduced).

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner, complaining of Colorado and Southern Railroad, hereinafter called Carrier.

The installation we are interested in is operated jointly by the Santa Fe and Carrier On May 10th certain Santa Fe employes withdrew from service and established a picket line at the above installation. Certain operating employes of Carrier, not embraced within the Schedule before us, respected said picket line. Thereupon Carrier issued to its freight office, warehouse, and yard employes, all within the Schedule we are concerned with, at said installation notice of job termination effective the next succeeding day. We must decide whether, under the circumstances, Carrier was warranted in acting under that portion of Schedule Rule 17 (c) referring to and concerning an emergency. We note, in passing, the Schedule does not define what fact or facts constitute an emergency.

In an early opinion, Award 439 (Millard, 1937), the Board held "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 reasonable sustained period." It would seem to follow and we think the Board has often held where the work of a job has substantially disappeared and under the circumstances Carrier cannot know when the work will again come into existence it is justified in abolishing the job. This view is not contrary to another early opinion, (Award 783 (Swacker, 1938)), and in particular to Schedule Rule 48 (d). It was held in a recent opinion, Award 3682 (Wenke, 1947), where a strike, the duration of which could not be predetermined, Carrier could abolish affected jobs, but by reason of practice the last above mentioned rule may be treated as an absolute guaranty, see Award 3723 (Swain, 1947).

In the matter here before us a strike was the basic cause of work practically ceasing to exist. Inasmuch as Carrier played no part in said strike we do not see in what manner the same was within the control of Carrier. Carrier certainly had no means by which it could ascertain its own employes would cease to perform their duties merely because another carrier and its employes were engaged in a dispute. In Award 3841 (Yeager, 1948), the Board held it was proper in view of an impending strike to abolish a position without giving the notice provided for in the rule before the Board. We think the facts in the instant case present an even stronger case of an emergency especially in view of the fact the notice of job termination was not issued until subsequent to the inauguration of the strike and the observance of the picket line.

But Petitioner avers the act of Carrier amounted to a suspension and not a bona fide abolishment. We think the notice was sufficient and the record reflects no Schedule violation when the jobs were reestablished. Thus we must look to the acts on the part of Carrier subsequent to its issuance of the above mentioned notice.

The record reflects some of the work remained subsequent to the effective date of the notice and with respect to that the notices were annulled. We do not see how that affects those employes whose work was no longer in being, see Award 3838 (Wenke, 1948). Carrier operations at points other than location in question may not be used to determine Carrier's judgment or intentions with respect to the abolished positions. With reference to the matter of displacement subsequent to job abolishment see Award 4787 (Robertson, 1950).

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 facts of record do not warrant an affirmative Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.