

Award No. 6091
Docket No. CL-6151

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
HOUSTON BELT AND TERMINAL RAILWAY COMPANY**

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

(a) The Carrier violated the Clerks' Agreement beginning August 24, 1951, when it nominally abolished Claim Investigator position No. 1312, although all of the duties of that position remained to be performed. And

(b) Claim that the Carrier be required to correct the violation and that all employees involved in or affected by the agreement violation be compensated for losses sustained.

EMPLOYEES' STATEMENT OF FACTS: On August 15, 1951, Carrier issued Bulletin No. 342 advising that Check Clerk position No. 208, held by J. P. Glenn would be abolished upon completion of assignment Saturday, August 18, 1951.

On August 17, 1951, Mr. Glenn, whose seniority date is December 1, 1936, advised the Agent of his desire to exercise his seniority rights to Claim Investigator position No. 1312, displacing Mrs. R. L. Bonin, whose seniority date is July 17, 1945.

The Agent informed Mr. Glenn that he would not be permitted to displace Mrs. Bonin—that it was expected the duties of Claim Investigator position No. 1312 would be changed—and that he (Glenn) should displace on Claim Investigator position No. 2024.

On August 22, 1951, Carrier issued Bulletin No. 348 advising that Claim Investigator position No. 1312 would be abolished upon completion of assignment on August 24, 1951. The bulletin stated this was being done—

“Account of rearrangement of duties.”

On the same date, August 22, 1951, the Carrier issued Bulletin No. 349, advertising a new position—Claim Investigator No. 2027, and **added** the following duties—

“Must be able to do stenographic work requiring knowledge of shorthand.”

8. If the parties hereto are in disagreement over the necessity of splitting the rest days on any such assignments, the Carrier may nevertheless put the assignments into effect subject to the right of the employees to process the dispute as a grievance or claim under the rules agreement, and in such proceedings the burden will be on the Carrier to prove that its operational requirements would be impaired if it did not split the rest days in question and that this could be avoided only by working certain employees in excess of five (5) days per week."

"Rule 38—Intermittent Service

"(f) No position shall be worked on an intermittent basis under this rule except by mutual agreement."

Obviously the case here involved does not fall within the category of any of the above rules and negotiations were, therefore, not in order.

3. That if need for negotiations is the question to be decided, the Carrier fully complied in conference with General Chairman Dyer and Division Chairman Newbill on July 25, 1951.

The Board's attention is invited to Agent Warren's letter of December 31, file 100-7, page 12 of this submission, addressed to General Manager Leach on subject case. Also, attention is invited to statements of Chief Clerk H. E. Scherffius and Warehouse Foreman F. L. Sumrall, which are designated as Exhibits "C" and "D", respectively, and made a documentary part of this submission.

4. That the Organization sought to intimidate an unnamed employee for the purpose of progressing instant claim; thus placing both the employee and the Carrier in a defenseless position. (See third paragraph of Division Chairman Newbill's letter of September 4, 1951, file B-14, page 8 of this submission). It is the contention of the Carrier that the Organization should be required to name the employee referred to so that the Carrier may produce evidence of that employee's educational accomplishments and office skill with that of any other employee involved in this dispute.

The facts and circumstances of the instant case set forth herein lend to the Carrier's contention that the Organization's claim is without basis because there were no violations of the agreement, nor were there any undue monetary losses suffered by the employees that could have been avoided by pursuance of any course other than the one taken by the Carrier, and the claim should be denied.

Matters contained in this submission have been subject of correspondence and conferences between both parties to this dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Rule 52 (a) limits the Carrier's right to abolish established positions and create new ones only where such action will (1) reduce the rate of pay or (2) evade the application of the rules. The abolishment of position No. 1312 and the creation of position No. 2027 did not reduce the rate of pay.

The contention that such action had the effect of evading the application of the rules is based upon allegation that J. P. Glenn was denied the right to exercise his seniority to obtain position No. 1312 on August 17, 1951, a few days before it was abolished. The evidence as to the conference between Glenn and Agent Warren on August 17, 1951 is in direct conflict. We have

no facilities for resolving that conflict and, since Claimant has the burden to prove the claimed violation of the rules, we must find that such allegation has not been proven and the contention cannot be sustained.

From the evidence here presented it appears that the abolishment of position No. 1312 and the creation of position No. 2027 was for the proper purpose of effectuating a change of duties. Consequently such action was not prohibited by Rule 52 (a).

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.