

Award No. 6099
Docket No. CL-5948

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

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

(a). The Carrier violated the Agreement with the Brotherhood governing hours of service, application of pay rates and conditions of employment when on February 5, 1951, it suspended twenty-one regular positions in the Baggage Master's Office at New Haven, Connecticut, and twenty-one regular positions in the Baggage Master's Office at Bridgeport, Connecticut, for one day on that date and refused to permit the employees regularly assigned thereto to perform their assigned work and duties on February 5, 1951; and

(b). That the Carrier shall be required to compensate the affected employees for loss of wages for one day's pay at the pro rata rate of the position to which they were regularly assigned.

EMPLOYEES' STATEMENT OF FACTS: The baggage room employees working the 11:45 P. M. to 7:45 A. M. shift at New Haven, Connecticut, and baggage room employees working the 11:00 P. M. to 7:00 A. M. and 12:00 mid-night to 8:00 A. M. shifts at Bridgeport, Connecticut, were notified verbally by the Carrier at their homes between the hours of 8:00 P. M. and 11:00 P. M. on February 5, 1951, not to report for their regular assigned positions that date because of passenger service curtailment. The following employees were affected by the Carrier's actions and are involved in the Employees' claim:

Baggage Room at New Haven, Connecticut.

J. Horan	Asst. Stationmaster	W. Ogurick	Mail Porter
T. Mahon	Train Guide	E. Leavitt	Mail Porter
L. Ferrebee	Janitor	J. Bohan	Checkman
J. Tencza	Parcel Clerk	J. Cappetta	Mail Porter
J. Griffin	Foreman, Mail Por's	G. Ryder	Mail Porter
D. Coursey	Foreman, Mail Por's	A. Alfonso	Mail Porter
E. Gilhuly	Mail Checker	R. McGrath	Checkman

powerless to avoid the discontinuance of passenger service at New Haven and Bridgeport is too clear to require argument. In the absence of crews trains could not be operated and mail could not be handled.

We submit in this case Carrier has complied with the provisions of the agreement and the claim should be declined.

The facts and arguments herein used are in accord with the handling of the dispute on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Each of the forty-two (42) claimants hold regularly assigned positions in the baggagemaster's office at either New Haven or Bridgeport, Connecticut.

Claim is made for one day's pay at the pro rata rate for February 5, 1951, contending that their position was blanked on that date in violation of Rules 47 and 63 of the Agreement.

The Carrier contends that each claimant was notified, between 8:00 P. M. and 11:00 P. M. on February 5, 1951, that their positions had been abolished due to a "sick strike" by the Trainmen. On February 6, 1951, claimants were given a letter reading as follows: "This letter confirms notification given you on February 5th, stating that this position has been abolished because of curtailment of passenger train service." On February 6, 1951, train service was resumed and claimants were called back to fill their positions. The positions were rebulletined and assignments were then made to senior applicants on February 14, 1951.

The Carrier contends that the claimants worked their former assignments as extra employees, commencing February 6, 1951.

The primary question to be determined is, were the positions abolished?

Rule 47 provides, in part, as follows:

"When forces are reduced or positions are abolished, seniority, fitness and ability will govern as to the exercise of displacements rights, in the selection of positions and reassignment of employees affected.

"* * * *"

"In the event of a reduction of forces, employees holding regular positions will be given not less than four calendar days' advance notice except that this rule will not apply to changes resulting from acts of God such as floods, hurricanes, fires and the like, or to other causes beyond the control of the carrier. This rule is designed as an advance notice of force reduction rule and not as a compensatory rule and therefore it does not provide for or contemplate compensation for all or any part of the four days for which the granting of the four days' advance notice is not given unless the Management, by arbitrary action, fails to comply with the requirements of the rule subject to the exceptions indicated."

It is unquestioned that, under the last-cited rule, the carrier can abolish positions where work has disappeared. The rule further provides that four days' notice is not necessary when changes occur "resulting from acts of God such as floods, hurricanes, fires and the like, or to other causes beyond the control of the carrier." (our emphasis) It is further without question that "other causes beyond the control of the carrier" cover such situations as the "sick strike." To give this phrase meaning, it must refer to causes other than set out in the preceding phrase. A "sick strike" is a cause "beyond

the control of the carrier." Therefore, four days' notice was not necessary prior to the abolishment of the positions. See Awards 4455, 4001 and 3841.

Next we must consider whether or not the carrier actually abolished the forty-two positions. On the evening of February 5th, the claimants were notified not to report for their regular assigned positions because of passenger service curtailment. This, in substance, was an abolishment of the positions. A blanket notice abolishing positions was posted on February 5th. On February 6, 1951, written notice was given supplementing the verbal notice of February 5th that the positions had been abolished. The claimants were notified on February 6th to report for work on their regular jobs.

Since the positions were abolished prior to their notification to report on their regular job, the notice to report on February 6th did not reinstate the positions. They had to be reinstated in accordance with the agreement, which was by rebulletining and assignment of the positions.

We feel that these positions were abolished in fact. Therefore, the Guarantee Rule 63 did not cover the abolished positions. The notices, both verbal and written, gave as reason for the abolishing of the positions, the curtailment of passenger service. This reason was sufficient to comply with Rule 47.

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

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.