

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

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

1. The Carrier violated and continues to violate the current Agreement between the parties, effective March 1, 1941, revised September 1, 1949, when it issued Bulletin No. 1861 on December 31, 1948, in the Agent's office, Atlanta Joint Terminals, Atlanta, Georgia allegedly abolishing position of Supervising Clerk, two positions titled Bill Clerks and one position titled Relief Clerk, Yard and Agency in seniority District No. 4, and transferred the duties assigned thereto, to the Yard Office force, in seniority District No. 3, and assigned higher rated work to lower rated employees, and,

2. That the Carrier shall make reparations for all monetary losses sustained by the employees adversely affected and that such compensation shall run until all the positions are restored and all work returned to seniority District No. 4.

EMPLOYEES' STATEMENT OF FACTS: On December 31, 1948, Carrier issued Bulletin No. 1861 in seniority District 4, Class 1, Office of the Agent, Atlanta Joint Terminals, Atlanta, Georgia abolishing four positions. A copy of the abolishment bulletin is attached hereto and identified as Employees' Exhibit "A".

Prior to the effective date of Bulletin 1861, these four Agency Clerk positions were maintained at the Yard Office of the Atlanta Joint Terminals, Atlanta, Georgia for the purpose of handling such Agency work as could be done at that point, to eliminate carrying waybills to the Agency office, which is located quite some distance away. The employees do not dispute the prerogative of the Carrier to abolish positions, provided such abolishments are made in the ordinary course of business, in good faith and in accordance with the provisions of the Rules of the Agreement between the parties. The Committee respectfully submits, however, that these stipulations were not met in the instant case. Following the abolishment of these four positions, the work still remained to be performed as a requirement of the Carrier. This requirement was met by the Carrier in assigning the work to positions in another seniority District, namely the Yard Office Force or District No. 3, and also assigned such work to lower rated employees.

trated if disputes could be so held in abeyance and raised again at any future time when the chances of success might appear more favorable."

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It was 16 months from the date of letter to General Chairman England before anything was heard from the Organization. Therefore, in view of the principle laid down by this Division in Award 4941, this claim should be denied.

To sum up, first Carrier feels this claim should be declined on its merits. Boiled down three jobs were established in 1923 in the same seniority district—a relief job was added later. A small amount of work, not over 15%, was taken from another seniority district. It had no effect on that district as no jobs were abolished. In 1948, the three jobs established in 1923 were abolished and the small amount of incidental work was returned to Seniority District No. 3. In 1951 two jobs were reestablished in Yard Office for Agency Employees and certain work was transferred from Yard. No protest was entered.

Second, Carrier feels that under Award 4941, and Award 6229, this claim should be denied.

All data contained herein has been furnished Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's Yard Office and Agent's Office constitute two different seniority districts. On December 31, 1948 Carrier abolished four clerical positions in the Agent's Office seniority district located in the Yard Office, and redistributed the work performed thereon. The Employees assert that some of the duties of those positions were assigned to employees in the Yard Office and to Chief Clerk in the Superintendent's Office. Carrier asserts that eighty-five per cent of the work on the abolished positions was distributed among positions covered by the Agreement and embraced within the Agency seniority district; the remaining fifteen per cent of the work, according to Carrier, was returned to the Yard Office from whence it was taken in 1923 without protest when the abolished positions were established. Effective May 1, 1951, Carrier established two clerical positions in the Agent's Office seniority district, at the Yard Office, and the incidental clerical work (presumably the fifteen per cent which the Carrier referred to) was again returned to the Agency seniority district. The Employees assert that the only work taken from the Yard Clerks in 1923 and transferred to the Agency Clerks was the placing of junction stamps on waybills and did not consist of fifteen per cent of the duties of the positions; in fact was so small a part of the duties of the Yard Clerks, that it was not thought enough to make a protest over.

The above summation of the salient points in each of the parties' submissions is indicative of the state of the record upon which we are requested to make a determination of this dispute. Except for the minor incidental work referred to above, there is nothing in the record which establishes what work was taken from the Agency seniority district and assigned to the Yard seniority district upon the abolishment of the Agency positions in December of 1948. The Employees apparently make no protest as to the manner in which that incidental work was handled by the Carrier. Conceding arguendo that under the applicable Agreement the Carrier is restricted from abolishing positions in one seniority district and assigning any of the work of the abolished positions to employees in another seniority district, there is no proof in the record as to what protested work was taken from the Agency seniority district and transferred to the Yard Office seniority district.

On January 14, 1949 the first of these claims was filed by Division Chairman W. E. England, who was one of the incumbents of the abolished positions, and who subsequently became General Chairman. There was a protracted and dilatory handling on the property and no specific facts were developed by either side as to the facts affording the basis for the claim. This, despite the fact that W. E. England, who presumptively by reason of having held one of the abolished positions had first-hand knowledge of the facts, was in office as General Chairman for a period of time during that handling. On May 7, 1951 the Carrier advised the then General Chairman England that it was reinstating two jobs in the Agency seniority district and denied the claims. That letter was unanswered for eighteen months, when the correspondence was renewed. Although some of that delay might conceivably be attributable to the death of Mr. England, the conclusion is inescapable that the Employees were less than diligent in that phase of the handling of the claim.

On the basis of the facts in the record before us it is apparent that the Employees have not sustained the burden of establishing sufficient probative evidence to support a finding of violating the Agreement. When that paucity of evidence is coupled with the eighteen month delay referred to in the previous paragraph of this Opinion, it is clear that we must find that there is no basis for an affirmative award, and that the claim should be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.