

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated and continues to violate the Agreement when effective August 31, 1949, it improperly "abolished" eleven (11) classified clerical positions at Inman Yards (Atlanta), Georgia, simultaneously "creating" six (6) "Utility Clerk" positions, refusing and continuing to refuse to properly classify and bulletin the so-called Utility Clerk positions, and

(b) The Carrier shall now be required to properly classify all clerical positions at Inman Yards (Atlanta) Georgia, and correctly describe by appropriate bulletin the preponderating duties of the individual positions as required by Agreement Rules.

EMPLOYEES' STATEMENT OF FACTS: On August 18, 1949, the Carrier's Superintendent of Terminals issued Bulletin Number 27 "abolishing" eleven (11) classified clerical positions effective with termination of assignment August 31, 1949. A copy of Abolishment Bulletin Number 27 is attached hereto and identified as Employees' Exhibit "A". Vacancy bulletins advertising the "abolished" positions as of the last vacancies prior to "abolishment" are attached hereto and identified as Employees' Exhibits (B-1), (B-2), (B-3), (B-4), (B-5), (B-6), (B-7), (B-8), (B-9), (B-10) and (B-11). NOTE: Position of "Yard Clerk" listed as the second position abolished (Employees' Exhibit "A", was last advertised as "Hold for Bill Clerk" by Bulletin Number 34 of August 8, 1948 (Employees' Exhibit "B-1").

On August 18, 1949, Bulletins numbered 45, 46, 47, 48, 53 and 54 were issued advertising "Newly established Utility Clerk" positions, all clerical duties in the Yard and Yard Office being listed as a preponderating duty of each of the "Newly established" positions. Copies of Bulletins 45, 46, 47, 48, 53 and 54 are attached hereto and identified as Employees' Exhibits (C-1), (C-2), (C-3), (C-4), (C-5) and (C-6) respectively. All assignments to these "New" positions were made effective September 1, 1949, concurrent with the effective date of the Forty (40) Hour Week Agreement.

Since September 1, 1949, additional clerical positions have been established, and some abolished, but the Carrier has continued and refused to

a reduction in wage rates as rates for utility clerk assignments are higher than those for yard clerk or tag clerk assignments. Yard clerk or tag clerk assignments are not needed under the present operation in the terminal.

Under the circumstances, it is clear that the Carrier did not violate and does not continue to violate the effective clerical agreement in abolishing on August 31, 1949 by Bulletins Nos. 27 and 28 fourteen positions and seven six-day relief assignments at Inman Yard, Atlanta, Georgia, and establishing, effective September 1, 1949, six assignments with title of utility clerk and fourteen regular relief assignments, therefore, the claim is wholly without merit and is unsupported by any provision of the effective clerical agreement. In these circumstances, a denial award by the Board is clearly in order. Carrier respectfully requests that such an award be made.

All relevant facts and arguments in this dispute have been made known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Concurrently with the inauguration of the 40-Hour Week, which became effective on September 1, 1949, the Carrier, by bulletins posted on August 18, 1949, undertook to abolish certain 7-day clerical positions at Inman Yards, Atlanta, Georgia, as of August 31, and to establish, in lieu thereof, a number of new positions. The abolished positions with which we are here concerned had previously been classified as 7 Yard Clerks, 1 Record Clerk, 2 Utility Clerks, 2 Tag Clerks, and 1 Report Clerk. All of the newly created positions were given the classification title of "Utility Clerks", and were assigned by bulletin a regular or relief positions, for five days per week with two consecutive relief days in each seven.

There is no money demand, but the Employes have protested the Carrier's action, demanding that the so-called new positions be properly classified and their predominating duties correctly described by appropriate bulletins. Reliance is placed on Rule 21 (e) of the effective Agreement which provides that, "established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

While the Employes do not claim that there was a resulting reduction in pay, they do assert that there was an evasion of the application of the rules. The Carrier denies any intent to evade the rules, but it seems to be well established that a responsible party to a contract must always be presumed to have intended the natural and logical consequences of his voluntary acts. The issue must, therefore, be resolved from consideration of the effect of the Carrier's conduct, rather than from the presence or absence of a preconceived intent on its part.

The Carrier says that its action in the premises was correct because the classifications of the abolished positions were merely payroll designations and that the Scope Rule of the Agreement defines clerical workers in broad terms as "Employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work * * *".

There is no magic in the title of a position, but the regularly assigned occupants, however designated, may not be arbitrarily deprived of their established seniority rights with respect thereto without a resulting violation of the Agreement. Rule 5 (e) of the Agreement provides that bulletins to fill vacancies shall show the location, title, rate of pay and predominating duties of (the) position. Even though the Carrier may use whatever name or title it may elect to designate a position, nevertheless, when such a position is regularly filled the employe's right to occupy it cannot be taken

from him by a mere change in such title. This must necessarily apply with respect to the many positions that are classified generally as clerical positions in the Scope Rule of the Agreement. An employe may have seniority rights with respect to a particular clerical position and he cannot be deprived of these rights by a change of the title of the position.

The Carrier also says that its action was necessary and proper to implement the 40-Hour Week. We do not find the provisions of the 40-Hour Week Agreement to be helpful to the Carrier. The note to Rule 7½ (a) of that Agreement provides that, "Existing assignments reduced to a five-day basis under this Agreement shall not be considered new jobs under bulletin rules and employes will not be permitted to exercise displacement privileges as a result of such reductions. However, existing six-day relief positions will be abolished and five-day relief positions will be established under bulletin rules." The occupants of the former positions were not, therefore, subject to being displaced as a result of the adjustments required to conform to the 40-Hour Week. We recognize that the advent of the 40-Hour Week required a new approach to many problems, (Award 5555), and that to effectuate the change it may have been necessary for a carrier to abolish some old positions, establish new ones, redistribute the work, and change rest days and starting times. Be that as it may, we find no justification for what the Carrier undertook to do, in the manner that it did it, in the instant case.

Finally, the Carrier says that the claim should be denied because there was a delay of approximately 19 months in asserting it, after the Organization had full knowledge of the facts. There might be merit in the Carrier's contention if this was a money demand growing out of a past violation, but we do not understand that a party to a contract that has not been fully performed can be stopped from demanding future compliance with its express terms.

In our judgment the Carrier violated the Agreement when it undertook to abolish the clerical positions embraced in the Claim and to establish new positions in lieu thereof, and that it should now be required to classify the several positions here involved by appropriate bulletins describing the preponderating duties of such positions, in accordance with provisions of the Agreement as herein interpreted.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1954.