

Award No. 7347

Docket No. CL-7363

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

ATLANTA AND WEST POINT RAIL ROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks that Carrier violated the effective Agreement between the parties when it issued Bulletin 1-54, dated Hogansville, Georgia February 26, 1954, but did not post this Bulletin until March 1, 1954, for the purpose of abolishing position of Clerk at that station.

The Carrier shall pay as a penalty for this violation, to Mrs. M. D. Briscoe the sum of \$41.13 which represents three days pay at \$13.71 per day.

EMPLOYEES' STATEMENT OF FACTS: The locale of this dispute is Hogansville, Georgia where the Carrier maintains an Agency consisting of an Agent and up to the time Bulletin 1-54 was issued, one Clerk. Mrs. Briscoe is shown on the roster dated July 1, 1944 as holding this position and has held it until it was abolished. See Employee's Exhibit "A" attached hereto. Her name is shown on the roster as Mrs. R. B. Briscoe, while on the Bulletin 1-54 it is shown as Mrs. M. D. Briscoe. See Employee's Exhibit "B" attached hereto. On the roster of January 1, 1954 she is still carried as Mrs. R. B. Briscoe. This came about by the fact that her Husband's initials were R. B. See Employee's Exhibit "A-1" also attached hereto. On Friday, February 26, 1954 the Agent at Hogansville, Georgia informed Mrs. Briscoe that her position would be cut off as of March 3, 1954. A Bulletin was prepared in Atlanta, Georgia and mailed to the Agent at Hogansville, Georgia reaching there Monday March 1, 1954. See Employee's Exhibit "F" attached hereto.

On March 11, 1954 formal claim was filed by the Organization on behalf of Mrs. Briscoe wherein Carrier was advised that this Clerk did not receive proper notice of the abolition of her position. In its reply to the claim as filed, the Carrier advised that Mrs. Briscoe was notified on February 26, 1954 that the job was abolished and the claim of the Employees was declined. The claim was then appealed in the usual manner up to and including the highest authority designated for the purpose of handling claims and grievances on this property, without settlement having been made. The Director of Personnel advised on May 18, 1954 that although the procedure might

than she would have been had the bulletin been posted on the 26th, as she was notified on that date that the position would be abolished at close of business March 3rd, and she had ample time to place herself if she so desired.

We can see no merit to this claim and request that it be declined.

All data contained herein has been made available to Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: We have in this Docket what Carrier admits to be a "technical" violation of rules, but pleads mitigating and extenuating circumstances for disallowance of the claim.

The violation being admitted, the claim is valid, since the Board is powerless to do equity between the parties.

Moreover, and, as a further basis for allowing the claim at issue, it has been noted that the employe named in the claim was displaced by abolishing her position three (3) days earlier than strict compliance with the rules permitted, and, therefore, she has a valid claim for constructive service in any event.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.