

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the System Committee that

(a) The Carrier violated the Agreement when on March 7, 1954 by bulletin 1-56 it allegedly "abolished" the position of Warehouse Clerk No. 2 at Montgomery, Alabama occupied by Claimant George T. Gann, assigning the Assistant Agent to perform the duties of Warehouse Clerk No. 2, until April 13, 1954, when Claimant Gann was returned to his former position, but no bulletin issued;

(b) The Carrier violated the Agreement when on April 19, 1954, by bulletin 6-54 it allegedly "abolished" the position of Warehouse Foreman regularly assigned to Claimant Fred L. Gartman, assigning the duties of Warehouse Foreman to the Assistant Agent;

(c) As a penalty for the violation described in (a) the Carrier shall be required to additionally compensate Claimant George T. Gann at the prorata rate of Warehouse Clerk No. 2 until the position is reinstated by bulletin as provided in the Agreement;

(d) As a penalty for the violation described in (b) the Carrier shall be required to additionally compensate Claimant Fred L. Gartman at the prorata rate of the "abolished" position of Warehouse Foreman from April 19, 1954 until the position shall have been reinstated and filled under Agreement Rules;

(e) All Employees covered by the Agreement who were wrongfully displaced because of the violations described in (a) and b) shall be compensated the difference between what they have actually received and what they would have received had the violations not occurred.

EMPLOYEES' STATEMENT OF FACTS: All employees involved in this dispute hold seniority in District No. 9, (Rule 3 of the Agreement) embracing all clerical employees of the Carrier in offices of Agents and Yardmasters, Montgomery to Selma, Alabama, inclusive. A copy of the seniority roster issued January 1, 1954 is attached hereto and identified as Employees' Exhibit "T".

For the reasons outlined above Carrier feels the claim is without merit and respectfully requests it be declined.

All data contained herein has been made available to Claimants.

(Exhibits not reproduced.)

OPINION OF BOARD: The locale of this dispute is the Carrier's Montgomery Alabama warehouse. Petitioners allege that the terms of the effective agreement were violated when, between March 7, and April 13, 1954, the position of Warehouse Clerk No. 2, occupied by claimant, George T. Gann, was abolished, and when the position of Warehouse Foreman, occupied by claimant, Fred L. Gartman, was likewise abolished, with the duties of each such position so abolished being assigned to the Assistant Agent.

The Organization takes the position that the work of the two positions abolished had the effect of removing work covered by Scope rule from the effective agreement, since it (work) was then and there reassigned to the Assistant Agent, an "excepted" position within the meaning of the Scope rule and other rules of the effective agreement, as well as the Memorandum of Agreement bearing date of April 8, 1942. It was pointed out that the Assistant Agent took over all of the duties of these positions during the period of their (positions') abolishment, thus rendering the said abolishments "nominal" in character.

The Respondent asserts that the abolishment of the positions of both warehouse Clerk No. 2 and Warehouse Foreman was due to declining business and that the work performed by the Assistant Agent was of a supervisory nature only. It was further pointed out that the Assistant Agent is covered by the Scope Rule of the Agreement and holds an exempted status only in so far as promotions, reduction of forces and abolishment of positions is concerned, and that since he (Assistant Agent) was covered by the Scope Rule the performance of the work in question was properly assignable to him.

Both the positions of Warehouse Clerk No. 2 and Warehouse Foreman are fully covered by not only the Scope Rule but all other rules of the effective agreement. While the position of Assistant Agent was an "excepted position" within the meaning of Rule 5 (b) and 14, such position, that is, Assistant Agent, is clearly subject to and is covered by the Scope Rule. That the Respondent has the right to abolish positions where the work perviously assigned thereto diminishes, or ceases to exist, is well settled by prior decisions of this Board. The remaining work of an abolished position must of necessity be assigned to those employees covered by the Agreement. The Assistant Agent here was so covered. The fact that this position was an exempted position in so far as a portion of the rules are concerned in no way affects its coverage by the Scope rule. The work here in question, as it concerned both positions at issue remained within the Scope of the Agreement when it was assigned to and performed by the Assistant Agent, so therefore, no violation of the Agreement occurred.

See Awards 3563 and Interpretation No. 1 to 3563, 3866 and 4235.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 22nd day of April, 1957.

SPECIAL CONCURRING OPINION TO AWARD 7821, DOCKET CL-7586

In discussing the Opinion of Board in this case during the adoption proceedings, the Carrier Members objected to the erroneous statement contained in the penultimate paragraph of the opinion reading:

“The remaining work of an abolished position must of necessity be assigned to those covered by the Agreement.”

and proposed that it be changed.

The Referee said that he did not intend any broad application and stated that he was deciding this case only on the record before him.

Accordingly we concur in the Award with the understanding that the disputed sentence is not intended to conflict with the correct principle contained in other awards, such as 5803, in which we held:

“It is the duty of management to operate its railroad with efficiency and economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employees of another craft who are entitled to perform it.”

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen