Award No. 11251

Docket No. CL-11020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated the Clerks' Agreement at the Freight House, Birmingham, Alabama, when on May 21, 1957 and continuing through June 22, 1957 it failed to fill, bulletin or abolish freight checker's position No. 149.

(b) Extra Clerk H. R. Perry and/or his successor, if any, be compensated a day's pay at the pro rata rate of $16.36 per day attaching to position No. 149 for May 21, 22, 23, 24, 27, 28, 29, 30, and 31 and June 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1957.

NOTE: Reparation to be determined by joint check of Carrier's payrolls and other records.

EMPLOYES' STATEMENT OF FACTS: (1) There is employed at the Freight House, Birmingham, Alabama, a force of employes who perform the clerical work necessary to the operation of the Freight Station coming within the Scope Rule of the Clerks' Agreement with Carrier governing the working conditions of the employes effective June 23, 1922, revised February 1, 1954.

May 20, 1957 D. S. Satterfield, regular incumbent, worked position No. 149. At the termination of his tour of duty on that date he was held out of service pending investigation of charges of insubordination. The investigation was held May 28, 1957 and Mr. Satterfield was dismissed from the service June 6, 1957.

May 24, 1957 Extra Clerk Perry, who was terminating an assignment in the Jackson, Tennessee Freight Office, was contacted by the Chief Clerk to the Superintendent and asked if he would go to Birmingham to fill the vacancy on position No. 149 the following Monday, May 27, 1957. He agreed and was told that he would be advised definitely later in the day. At about 4:00 P. M. of that day he was informed that his services would not be required at Birmingham.

but each employe adversely affected is entitled to compensation **only in such sums as would have accrued to him had the notice provision of the Article been complied with.**" (Emphasis ours.)

Here, too, had the Carrier violated the agreement, the penalty, if any, could be for no more time than Satterfield would have worked had notice of abolishment been served to him — three days had he not been dismissed — and even then such penalty could apply only to him. Certainly, it cannot be logically argued that Extra Clerk Perry was hurt or harmed because Carrier did not notify Satterfield that his position was abolished. The notice provision of the agreement clearly applies to incumbents of positions and **not extra employes.** Moreover, as previously shown, Extra Clerk Perry had no contractual rights to the position whatsoever under the circumstances involved.

SUMMARY

The position involved here was blanked during Satterfield's (the regular incumbent) suspension from service pending investigation — May 21 through June 6, 1957 — which was in complete accordance with the provisions of the agreement. When Satterfield was dismissed from service on June 6, 1957, his position was then and there abolished and has not since been reinstated. Under either circumstance, there is no basis whatever for claim in favor of Extra Clerk Perry or any other employe.

The claim is totally without merit, and it should be denied.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The Illinois Central Railroad Company.

This dispute arises over the abolishment of Position No. 149 at Birmingham, Alabama on May 20, 1957, the regular occupant, Mr. Satterfield was suspended. On June 6, 1957, he was dismissed from service. June 20, 1957, a bulletin was issued advising that the position was abolished effective May 21, 1957.

Petitioner contends that Carrier violated Rules 18 (d) and 7 (a).

Carrier contends that this action did not violate those rules and was proper under Rules 12 and 13.

The Petitioner contends, that under Rule 18 (d) (1) (3), a position cannot be abolished until notice is given. Under the particular rule and circumstances herein, notice is not necessary.

Let us compare Rule 18(d) (1) (3) with a comparable rule between different parties.

> "(d) (1) When regularly assigned Group (1) or (2) positions are to be abolished, the occupants thereof will be given at least seventy-two (72) hours advance written notice.
>
> "(3) Copies of notices to employes will be furnished the Local and Division Chairmen concerned, and will be posted on bulletin boards in the seniority district affected."

Rule 12 (c) of the Agreement between the same Organization and The Chicago, Milwaukee, St. Paul and Pacific Railroad Company read as follows:

". . . When bulletined positions are abolished, notice will be placed on all bulletin boards in the seniority district affected and a copy of same will be furnished to the local, division and general chairmen. Such bulletin notice shall include the names of employes filling the positions abolished at the time abolished."

The Petitioner relies upon Award 4661 where the above rule was in effect. We note there is a substantial difference in the rules. We cannot place into the rule that which is not there. Rule 18 (d) (1) (3) is not ambiguous. We cannot place more requirements upon the Carrier than that which the rule provides for.

Rule 7 (a) requires that vacancies be promptly bulletined. The Carrier contends that this is either a short or indefinite vacancy as set forth in Rules 12 and 13.

"Rule 7 (a). New positions or vacancies will be bulletined in agreed upon places accessible to all employes affected for a period of seven (7) days in the districts where they occur; bulletin to show location, title, hours of service and rate of pay. Employes desiring such positions will file their applications with the designated official within that time and an assignment will be made within five (5) days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. Bulletins for new positions and vacancies will be numbered consecutively for each year."

"RULE 12—SHORT VACANCIES

"Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletin."

"RULE 13—INDEFINITE VACANCY

"Positions or vacancies of indefinite duration need not be bulletined until the expiration of thirty (30) days from the date of employment or vacancy."

This is true until June 6th. While the occupant's dismissal was under consideration it could be assumed that it was an indefinite vacancy. However, on June 6, the Carrier admits that it did not know if the position would be continued or not. Consequently on that date it was a permanent vacancy. At a later date as it turned out it was for less than 30 days but that was after a decision had been made to abolish the position. The type of position must be determined as of June 6th.

It therefore follows that Carrier violated Rule 7 (a) when it failed to promptly bulletin the position on June 6th. Under that rule the Carrier would bulletin the position for 7 days and within 5 days thereafter make an assignment.

If an application were received, the Carrier should have made an assignment by June 17th.

The next issue to determine is whether or not the Carrier had the right to blank the indefinite vacancy from May 21 to June 6th and the permanent vacancy from June 6th to June 18th.

We can find no rule which requires the Carrier to fill the position up to June 6th. On that date when it became a permanent vacancy, the Carrier was obligated to comply with Rule 18.

"Interpretation — (6) An employe who has elected to exercise his rights to options (b) and (c) of paragraph (1) of this interpretation, who subsequently becomes entitled by his seniority to a new position or vacancy considered as permanent or of substantial duration that he is qualified to fill, shall be notified to return to service in accordance with the provisions of Rule 18 with copy of such notification furnished the Division Chairman."

We therefore find that Claimant is entitled to one day's pay at the rate of $16.36 per day for each day that he did not work between June 6 and June 21 when the position was abolished.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated.

AWARD

Claim sustained as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION
ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11251, DOCKET CL-11020

The majority finds that "carrier admits that it did not know if the position would be continued." Immediately thereafter, without basis or justification, decided "consequently, on that date, it was a permanent vacancy", disregarding Rule 14 describing a permanent vacancy as:

"Positions or vacancies **known** to be of more than thirty (30) days' duration will be bulletined and filled in accordance with these rules." (Emphasis ours.)

Under the express provisions of this rule, before a vacancy is permanent, it must be **known** to be of more than 30 days.

The majority found that "it was an indefinite vacancy" up through June 6. It is a simple mathematical computation to find there are not thirty days between June 6 and June 20. Carrier could not have known the vacancy would be for more than 30 days nor was there any proof to that effect.

Contrary to the majority's decision, this was not a permanent vacancy; consequently, unnecessary to bulletin it.

For this reason, we dissent.

W. M. Roberts
G. L. Naylor
R. E. Black
W. F. Euker
R. A. DeRossett