



Award Number 17785

Docket Number CL-17804

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6480) that:

- (1) The Carrier violated the Agreement, including Rule 15-2, when it ceased to allow Mrs. Luella Rash to perform the duties of comptometer Operator, to which she was assigned by Assignment No. 3 on date of May 3, 1966.
- (2) The Carrier now recall Mrs. Luella Rash to perform the duties of Comptometer Operator at rate of the position to which she was assigned prior to January 13, 1967, the last date on which she was permitted to perform the duties of the position which she had occupied since May 3, 1966.
- (3) Mrs. Luella Rash now be compensated for each and every work day at the rate of the position to which she was assigned on date of May 3, 1966, beginning with January 16, 1967, and continuing until such violation ceases to exist. Such compensation to be less any amount that has been paid for service rendered since January 16, 1967.

EMPLOYEES' STATEMENT OF FACTS: The facts, as we understand them to be, are as follows:

Mrs. Luella Rash, whose seniority dates from March 8, 1963, in the Data Processing Department, worked various assignments in the department and on May 3, 1966, was assigned to a Comptometer Operator position which was bulletined on Advertisement No. 3, May 2, 1966, as a new position. She continued on the new Comptometer Operator position through Friday, January 13, 1967. On or about January 9, 1967, Manager Data Processing Department, Mr. E. J. Klein, orally advised Mrs. Rash that the Comptometer Operator, on which she was the regular incumbent, would be abolished but failed to give her a written notice of such abolishment. As a matter of fact, he did not issue an abolishment notice, as required in Rule 15. On the basis of that oral information, Mrs. Rash then bid for and was assigned to a Comptometer Operator position bulletined on Advertisement No. 1, January 10, 1967, made vacant account Mrs. Kay Blow being granted sick leave. She began occupying her new assignment January 16, 1967, and continued thereon until February 27, 1967, when Mrs. Kay Blow returned to work. When

worked through March 3, 1967, at which time she became furloughed as result of being displaced by a senior employe.

March 13, 1967, the Employes filed claim in favor of Mrs. Rash for the difference between rate of comptometer operator and amount earned each work day subsequent to January 16, 1967, alleging that the position of comptometer operator to which she was assigned May 3, 1966 was not properly abolished on basis that no notice or bulletin of abolishment has been issued abolishing the position effective January 13, 1967.

The claim was denied.

Exhibits 1 to 4, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective April 1, 1946, reprinted January 1, 1963, copy of which is on file with the Board.

(Exhibits not Reproduced)

OPINION OF BOARD: Claimant, a Comptometer Operator, was orally told that her job would be abolished in about four days. Acting on this information, Claimant bid for and was assigned to another similar position, the occupant of which was sick, but returned some forty (40) days later and displaced Claimant. Claimant then exercised her seniority rights and took a lesser job for several days until she was displaced. This claim is advanced on the premise that Carrier violated the Agreement in not giving Claimant written notice (as required by Rule 15-2) that the job was to be abolished. In fact, Employes claim that since notice was not properly given anyone, the job not been properly abolished, and that under Rule 12-1 (providing for an employee's return to a job not abolished), Claimant has a right to return, and since she was not allowed to do so, she should be compensated for each day up until the job is properly abolished.

We agree the Carrier violated the Agreement as to the failure to give proper notice, but we do not believe Claimant's former position still exists, and we find that Employes have failed to show what, if any, damages Claimant sustained for the violation of the notice provision.

Carrier has the right to abolish positions. This job was not abolished properly. But even a defacto abolishment accomplished the purpose. Everyone, including Claimant, knew the job no longer existed. And Claimant acted in such a manner as to show she was well enough aware that the job had been abolished. Had the Employes proved that Carrier's violation had damaged Claimant, Claimant would be entitled to damages. But the record shows to the contrary. It might be mentioned that the record is silent as to the Claimant even re-applying for the job in question.

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 to the extent indicated in the Opinion.

A W A R D

That portion of paragraph (1) of the Claim alleging that Rule 15-2 was violated in that no written notice was given is sustained. The remainder of paragraph (1) and all of paragraphs (2) and (3) of the Claim are dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1970.