

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26678
Docket Number MS-26309

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (G. R. Brown
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: "Claim for and on the behalf of Mr. G. R. Brown, Clerk,
Ray Yard, Denison, Texas (CL-84-6-MKT) that:

1. The Missouri-Kansas-Texas Railroad Company violated the current Agreements but not limited to DP 451, Addendum No. 4, along with DP 553 and DP 463, failed and refused to afford elections and/or options entitled (sic) to under DP 463 and Addendum No. 4, Feb. 7, 1965 agreement, as amended when Position No. 2900 was abolished at Wichita Falls, Texas, August 1, 1983, forcing Claimant to change his point of employment and residence in excess of thirty (30) miles distance to obtain another position.

2. The Missouri-Kansas-Texas Railroad Company violated the current Agreement but not limited to the above mentioned agreements and failed to follow guidelines as set forth in The Oregon Short Line Agreement, New York Dock Agreement, Burlington Agreement, and the Washington Job Protection Plan, and failed to give proper notice, and failed to follow proper procedures in abandonment of rail line from and including Devol Oklahoma, to and including Altus, Oklahoma, and in entering into a transaction to sell, and selling said portion of track, eliminating the territory of the position of Mobil Agent and then extending the territory of Mobil Agent to include Wichita Falls, Texas, and Burkburnett, Texas, which was the territory covered by Position No. 2900 at Wichita Falls, Tx.

3. Carrier shall now allow Mr. G. R. Brown one (1) days pay at the rate of position No. 2900, for August 10, 1983, and continuing on that same basis for each subsequent day thereafter until such time this continuing violation is corrected, reimbursement for traveling, living and moving expenses incurred as a result of this change, including pay at protected rate, five (5) days to move and transfer allowance, and afforded right to opt to accept lump sum separation allowance."

OPINION OF BOARD: This dispute deals with the Carrier's abolishing the position of Chief Clerk at Wichita Falls, Texas, on August 1, 1983. On the date cited, Claimant herein was temporarily working the position of Mobile Agent at the Wichita Falls location. Upon his displacement, Claimant exercised his seniority to a position (in the same seniority district) at Denison, Texas, which was in excess of thirty miles from Wichita Falls. This was the only position to which he could move at the time.

Claimant alleges that Carrier violated a number of Agreements in this matter, including: DP-463, Oregon Short Line, Washington Job Protection Agreement, New York Dock and the February 7, 1965 Agreement. It is urged that Carrier failed to give the Claimant proper notice, failed to afford options to the Claimant and turned over most of the duties of the Chief Clerk's position to the Mobile Agent located at Wichita Falls.

Carrier maintains first that this is not the proper forum for this dispute since it allegedly involves the February 7, 1965 Agreement. Further, Carrier asserts that the abolishment of the Chief Clerk's position was due to an ordinary force reduction and was not a technological, operational or organizational change. Carrier states that after it initially attempted to abandon the trackage involved in 1978, that Petition was not approved and the property was later (in 1982) sold to the State of Oklahoma. Thus, according to Carrier the abolishment of the position in question was not remotely related to the proposed abandonment since the job was abolished some six years following the proposed abandonment.

The Claimant submitted certain documentary evidence together with his rebuttal statement to this Board. It is well established that such evidence may not be considered since it was not presented during the handling on the property. The Board also notes that the matter of jurisdiction need not be dealt with in view of our determination on the merits.

Claimant's reliance on the Agreement of February 15, 1973 (DP-463) is misplaced. That Agreement dealt with the establishment of the Mobile Agent position at Wichita Falls; that position still exists. That Agreement has no bearing whatever on the abolishment of the Chief Clerk's position. Further, there is no evidence to show that any of Claimant's former work was transferred to the Mobile Agent's position.

From the entire record of this dispute, it appears that the abolishment of the Chief Clerk's position was an ordinary force reduction and cannot be considered to be caused by technological, operational or organizational changes. As such, none of the protective benefits alluded to in the Claim is appropriate (see Awards 7, 167 and 76 of Special Board of Adjustment 605).

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 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

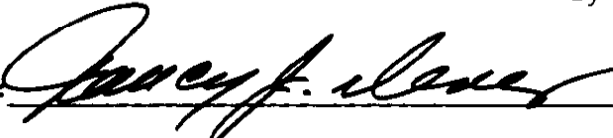
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.