

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

**FLORIDA EAST COAST RAILWAY COMPANY (SCOTT M.
LOFTIN AND JOHN W. MARTIN, TRUSTEES)**

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

The carrier be required to compensate Caller E. L. Folsom for a day's pay, when, as a result of changing his assigned relief day, his days of work per week was reduced below six in violation of the provisions of Rule 69 (a).

EMPLOYES' STATEMENT OF FACTS: On January 29, 1947, Caller E. L. Folsom, Jacksonville, who was assigned to a position necessary to the continuous operation of the carrier, was notified by carrier's Superintendent that effective February 6, 1947, the assigned relief day of his position would be Thursday, instead of Friday, and he was relieved on Friday, January 31, and Thursday, February 6.

POSITION OF EMPLOYES: In support of their claim, the employees cite the following rules of the January 1, 1938 agreement:

"Rule 1. These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

"Group (1) Clerks—(a) Clerical workers
(b) Machine Operators.

"Group (2) Other office and station employees—such as office boys, messengers, chore boys, train announcers, gatemen, train and engine crew callers, operators of certain office or station appliances and devices, and telephone switchboard operators."

"Rule 50 (a) Except as provided in paragraph (b) of this rule, work performed on Sundays and the following holidays, namely: New Year's Day, Washington's birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays falls on Sunday the day observed by the State, or by the Nation in the absence of State recognition, shall be considered the holiday) shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier who are regularly assigned to such service will be assigned one regular day off in seven (7),

16, 1945, and in progressing these claims the Employes have placed themselves in no position to charge anyone with sharp practice. They are progressing this claim on the grounds that Rule 69 has been violated. In order to protect itself against being victimized by distortion of the purpose of this rule the Railway insisted on and secured Paragraph (b) which reads:

"Nothing in this rule shall affect or prevent the abolition of a position at any time."

The Railway has no desire to incur the additional work of abolishing and readvertising such positions, and it does not indulge in sharp practice, but it must protect itself by taking full advantage of the rights reserved to it in the agreement in order to protect itself against a distortion of the agreement.

Exhibits Not Reproduced.

OPINION OF BOARD: In this claim Caller Folsom, assigned to a position necessary to continuous operation, had his relief day changed. As a result he was relieved both on Friday, January 31, 1947, and on Thursday, February 6. Petitioner contends this was a violation of Rule 69 which guarantees six days work per week.

In Award No. 3923 we sustained a claim involving similar facts and the same issues under the same agreement. Even though in that case claimant was relieved on both of two days in the same calendar week, we pointed out that the meaning of Rule 69 is to guarantee six days work out of seven so that the operation of the rule was not restricted to a calendar week but governed a "work week" as well. Since claimant here worked only five days out of the seven constituting his work week, Rule 69 was violated.

Accordingly, the claim must be sustained.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1948.