

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 Yard Clerk P. J. Allen, Jr., for a day's pay when, as a result of changing his assigned relief day, his days of work per week were reduced below six in violation of the provisions of Rule 69 (a).

EMPLOYES' STATEMENT OF FACTS: On November 5, 1946, Yard Clerk P. J. Allen, Jr., Bowden Yard, who was assigned to a position necessary to the continuous operation of the carrier, was notified by carrier's General Yardmaster that effective November 8, 1946, the assigned relief day of his position would be Friday, instead of Thursday, and he was relieved on Thursday, November 7, and Friday, November 8, 1946.

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 as-

The claim is, therefore, without merit and should be denied.

8. In his letter of May 1, 1947, quoted in Item No. 7 of the Carrier's Statement of Facts, the Chief Operating Officer stated that while Rule 69 and the letter understanding of February 16, 1945, do not support these claims "in order to avoid unnecessary correspondence, we will, in the future, when it is again necessary to make changes in assigned relief days, abolish the old positions and readvertise them with the newly assigned rest days." In his letter of May 2, 1947, reproduced as Carrier's Exhibit "E," the General Chairman stated that if this were done "you will simply be resorting to what might be termed sharp practice."

The General Chairman knows as well as does the Railway what was negotiated into revised Rule 50 and the letter understanding of February 16, 1945, and in progressing these claims the Employees 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 Yard Clerk Allen, filling a position necessary to continuous operation, had his relief day changed. He was relieved both on Thursday, November 7, 1946, and on Friday, November 8, 1946. Thus, the number of days he worked in a week was reduced to five in violation of Rule 69. That rule guarantees six days work per week.

In Award No. 3923 we sustained a claim involving the same situation and the same issues. This claim is between the same parties under the same Agreement.

Accordingly we must sustain this claim.

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 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.