# Award No. 5114
# Docket No. CL-5114

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

Adolph E. Wenke, Referee

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## PARTIES TO DISPUTE:

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

## ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: A. Claim of the System Committee of the Brotherhood that the Carrier violated rules of the Clerks' Agreement at 28th Street Station, New York, N. Y., when on November 20, 1948, and subsequent dates herein named (paragraph B) it blanked regularly established positions contrary to the intent and purposes of Rule 23, current Agreement, effective July 1, 1945.

B. That the following named employes be compensated for wage losses sustained on dates herein named:

| Name of Employe—Claimant | Position and name of Regular Assigned Occupant Absent on Dates Specified | Date | Employe Exhibit No. |
|---|---|---|---|
| Kramer, Paul F. | Howath, Jos.—R&D Clerk | 11-20-48 | 1 (a) & (b) |
| Frazier, Henry | Donnelly, T.—Trucker | 11-20-48 | 2 |
| Burns, M. | Blaikie, L.—R&D Clerk | 11-20-48 | 3 |
| Hillary, L. G. | Conway, J.—Trucker | 11-27-48 | 4 (a) & (b) |
| Stimpfel, Stephen | Blaikie, L.—R&D Clerk | 11-27-48 | 5 |
| Stimpfel, Stephen | Blaikie, L.—R&D Clerk | 1- 8-49 | 5 |
| Edwards, Jackson | Blaikie, L.—R&D Clerk | 12- 4-48 | 6 |
| Edwards, Jackson | Gadson, G.—Trucker | 12-11-48 | 6 |
| Edwards, Jackson | Gadson, G.—Trucker | 12-18-48 | 6 |
| Nafthal, Robert B. | Gadson, G.—Trucker | 12- 4-48 | 7 |
| Nafthal, Robert B. | Faratro, A.—Trucker | 12-11-48 | 7 |
| Nafthal, Robert B. | Faratro, A.—Trucker | 12-18-48 | 7 |
| Washington, Edward | Slenska, B.—Trucker | 1- 8-49 | 8 |
| Roberts, Eugene | Conway, J.—Trucker | 1-15-49 | 9 (a) & (b) |
| Spencer, Nelson | Bavaro, J.—Checker | 1-22-49 | 10 |
| Guido, Joseph A. | Gross, A.—R&D Clerk | 1-29-49 | 11 (a) & (b) |
| Guido, Joseph A. | White, W. J.—R&D Clerk | 11-20-48 | 11 |
| Alexander, Gordon | DeMeo, J.—Trucker | 1-29-49 | 12 |
| Piegari, Joseph | Williams, A.—Stower | 1-29-49 | 13 |
| Dixon, Jos. T., Jr. | Donnelly, T.—Stower | 2-12-49 | 14 |

C. That employes be compensated for wage losses sustained on all subsequent dates where similar violations have occurred.

EMPLOYES' STATEMENT OF FACTS: This case involves primarily the application of Rule 23-A-1 and 3 of our Agreement with the Carrier effective July 1, 1945. This rule provides a formula for the establishment of the

This claim is based entirely upon a theory that carrier should assume responsibility, there being no foundation in any agreement for the organization's contention. The claim surely does have all the earmarks of a request to modify and broaden the guarantee rule as applying to others than the regular incumbent and in substance is asking the Board to give the Organization, by an award, a rule that it has not secured through negotiations. Therefore, to grant the claim of the Organization in this case would require the Board to completely disregard the agreement between the parties herein involved. The Board has no jurisdiction or authority to take such action.

Carrier denies violation of any agreement rule or understanding and states that the claim is not supported by the applicable agreement and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee of the Brotherhood claims that the Carrier violated rules of the Clerks' Agreement on November 20, 1948, and subsequent dates, at its 28th Street Station, New York, New York, when it blanked regular positions established under Rule 23 (a) 3 of the parties' effective Agreement.

The record discloses that a number of regularly assigned employes to positions established pursuant to Rule 23 (a) 3 of the parties' Agreement did not report or were excused from work on various Saturdays. On these Saturdays Carrier used as many additional force employes as "shaped up" for work as were necessary to have as many or more men working as the total of all regularly established and assigned Roster "B" platform positions, although that was not always possible. However, it did not assign them to the vacancies created on such regularly assigned positions.

The question thus presented by this claim is, is the Carrier obligated to fill all regular eight-hour positions established pursuant to Rule 23 (a) 3 on six days each week, that is, fill any such position on any day the employe regularly assigned thereto may be absent from work?

Rule 23, as far as here material, provides:

> "(a) Regularly assigned Roster 'B' platform positions will be established quarterly as follows:
>
> * * *
>
> 3. Divide the total manhours paid for at each operating unit during the same quarter of the preceding year by 1224, to arrive at the number of regularly established eight (8) hour positions to be worked during the current quarter for the number of days per week as provided in Rule 28, * * * to be known as the regularly established Roster 'B' platform positions."
>
> "(b) The regularly assigned Roster 'B' platform positions as determined in paragraph (a) of this rule will be filled in the regular manner as provided in this agreement."

Rule 28, as far as here material, provides:

> "Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes below six (6) per week, * * *."

Under these rules it is the duty of the Carrier to work all regular eight-hour Roster "B" platform positions established pursuant to the formula provided by Rule 23 (a) 3, six days per week. While there are exceptions to this requirement enumerated in Rule 28 they are not here material except

the possibility that one of the days for which claim is made might be a holiday.

The foregoing requirement was not met by the fact that on the dates such regularly established positions were not occupied the Carrier used additional forces pursuant to the Rule 23 (a) 4 in number sufficient to equal the number of regularly established positions then vacant. Rule 23(a) 3 requires that the regularly established positions be worked six days per week, unless exceptions to Rule 28 apply, and when any vacancy arises by reason of an employe assigned thereto being off it is the duty of the Carrier to see that the position is filled and worked.

Of course, if an extra or additional force employe is actually assigned to the regularly established position on which there is a vacancy and he performs the work thereof on the day the regular occupant is absent and is paid the wages thereof, then Carrier has fulfilled its obligations under the rules in relation thereto.

We find that the Carrier did not perform the obligations imposed upon it by its Agreement with the Clerks and, because of its failure to do so, the claim is 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of November, 1950.