

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21547
Docket Number CL-21677

Irwin M. **Lieberman**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Buffalo Creek Railroad

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood,
GL-8131, that:

(a) The Carrier violated the Agreement when on July 3, 1975 it abolished the First and Second Trick Block Operator positions at P&B Junction Block Station.

(b) The Carrier now be required to restore the above mentioned Block Operator positions at P&B Junction Block Station.

(c) The Carrier shall be required to compensate Stanley Walter **Kania**, Anthony **F. Zulawski** and all other **employees** (to be designated by the Organization) affected by the improper abolishment, a day's pay at the Block Operator's rate for **each** and every day retroactive to July 5, 1975.

OPINION OF BOARD: On August 27, 1954, the parties hereto made an agreement which provided, inter alia, that two Block Operator positions **at** P. & B. Junction would **not be** abolished until such time as the Carrier had natural attrition credits available. Notwithstanding this agreement on attrition, the Carrier notified Claimants Zulawski and **Kania** that their positions were abolished as of the completion of their tours of duty on July 3, 1975.

The **abolishments** were protested and continuing claims were filed on behalf of Claimants for an additional day's pay for each work day retroactive to July 5, 1975. The Claims on behalf of the two Claimants were appealed on September 26, 1975 to Carrier's highest officer designated to receive claims. Some seventy-four days later the appeal was declined.

From the facts above there are two issues before this Board: the time limit question relating to the denial of the Claim at the highest level of Carrier; and secondly, whether or not the abolishments were proper under the agreement.

With respect to the time-limit issue, under the authority of National Disputes **Committee** Decision 16, we will sustain the claims of both Claimants for a day's pay at Block Operator's rate for each work day (five days out of every seven) for the period beginning July 5, 1975 and **ending** (including) December 11, 1975, the date of receipt of Carrier's belated denial. It should be noted, parenthetically, that the record of the dispute shows nothing with respect to any waiver or extension of time limits for any purposes.

With regard to the merits of the dispute, we note from careful review of the record that while the claims were being handled on the property most of the parties' substantive arguments dealt with the application of the fourth paragraph-of the August 27, 1974 Agreement. It was not **until** after the case was docketed with this Board that Carrier alleged that during the handling and prior to the date of their **December 9, 1975** denial letter, two attrition credits became available, and thus the two positions could have been abolished at the time those credits became available. The Organization has challenged this assertion as not being handled on the property and under authority so well accepted as to not require citation, this challenge is valid.

Nonetheless, we still have to dispose of the merits of the claim subsequent to December 11, 1975. Therefore, we order that a joint check of Carrier's records be made and if this check develops that two attrition credits be- available prior to December 11, 1975, Carrier's liability on the claim terminated that date. If attrition credits did not become available until a date subsequent to December 11, 1975, then the claims of **Kania** and **Zulawski** are payable on the same basis as outlined above to the date such attrition credits became available.

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 violated.

A W A R D

Claim sustained to the extent set forth in the ~~Opinion above.~~

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **May 1977**.

