

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 22508  
Docket Number CL-22595

**John J. Mangan, Referee**

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

**PARTIES TO DISPUTE:**

**Norfolk and Western Railway Company**

**STATEMENT OF CLAIM:** Claim of the **System Committee** of the **Brotherhood** (GL-8584), that:

1. **Carrier** violated the Agreement between the parties when on **January 27, 1977**, they abolished the position of second trick Clerk's position at **Kinney Yard** on the **Norfolk Division** and **since** then has **used Extra Board Clerks** to fill the position **and/or** used the **regular** trick clerks to work overtime instead of reestablishing the position **as called for under the April 1, 1973 Agreement**.

2. **As a consequence of the above stated violation Carrier shall now be required to compensate the senior available furloughed employee for each date this position was worked and is filled by Extra Board clerks and/or worked overtime by the regular assigned clerks. This pay to be based on the applicable prc rata rate of the position. This claim shall commence Monday, March 20, 1977 and continue until this Violation is discontinued or the position is reestablished. The senior available furloughed clerk to be determined by a joint check of the Carrier's records and also the days this position is filled or worked overtime will be determined by a joint check of the Carrier's records. (BRAC Exhibit 1)**

**OPINION OF BOARD:** (Prior to turning to the merits of this dispute, we must deal with the Carrier's arguments that the claim before the Board has not been timely presented and is therefore barred from our consideration. The Carrier argues that a position was abolished on **January 27, 1977** and that a claim was not filed until **May 17, 1977** claiming compensation retroactive to **March 20, 1977**. This, they argue, is not in accord with Rule 38(a) in that the claim was not filed within sixty (60) days from the date of the occurrence on which the claim is based. The Organization argues that the claim is proper in that it is a continuing claim filed under Rule 38(d) and as such it may be filed at any time except that no money can be claimed retroactively for more than sixty (60) days prior to the filing date. We are persuaded that the Organization's contentions are correct, that the claim before us is one of a continuing nature and fits within the parameters of the National)

(Disputes Committee **DECISION NO. 21**. See also Awards 13651 (**Englestein**) and 21782 (**Eischen**). We **will** consider the claim on its merits.)

On January **27, 1977** the Second Trick Yard Clerk Position at **Kenney** Yard was abolished. The remaining work on the position was in the main assigned to either the First Trick Yard Clerk Position or to **the Third Trick** Yard Clerk's position. However, on occasion, the First Trick Yard Clerk worked overtime into the hours within **the time assignment** of the abolished Second Trick Yard Clerk. Also, the Carrier, on occasion, utilized an Extra **Board employe** to perform extra work within **the hours** of the assignment of the abolished Second **Trick** Yard Clerk Position. The **Organization** argues that this **occurred** with sufficient **regularity** to require the bulletining of a **regular** assignment.

The Organization **argues** that Carrier's actions violated Rule **12** of their **agreement**, particularly Paragraph (g), reading:

"(g) **New** positions or vacancies of thirty calendar days or less duration **shall** be considered short vacancies **and may be** filled without **bulletining**. However, when there is reasonable evidence that such new positions or vacancies will extend beyond the **thirty-day** limit, they shall be **immediately** bulletined showing, **if** practicable, probable or expected duration."

The Carrier disputes this. There is some evidence in the record that indicate<sup>6</sup> during one **time** span the "position" was filled in one fashion or another on what would have been fifty per cent of its **assigned** work days. There is other evidence covering a longer time period that shows that the "position" was "**worked**" only seventeen **per cent** of the time. The **record** also **discloses** that for two separate **three month periods no work was** performed at all during **the hours of** the abolished **assignment**. From this and other evidence on the **frequency** of work we **must** conclude that the Organization has failed to establish that Rule **12(g)** of their **agreement** was violated.

We **will** deny the claim.

**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. W. Paulsen  
Executive Secretary

**Dated** et Chicago, Illinois, this 17th day of **September 1979**.