

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23187
Docket Number CL-23064

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Cincinnati, New Orleans and Texas Pacific Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-8859)
that:

Carrier violated the Agreement at Cincinnati, Ohio, when on December 4, 1977, it abolished positions on the Yard Clerks' Extra Board below the authorized and established strength of that Board, thereby depriving Ms. S. J. Toler of work to which she was entitled.

For this violation, the Carrier shall be required to compensate Ms. S. J. Toler in the amount of compensation she could have earned as an occupant of that Board, beginning December 4, 1977 and continuing until the date she is again allowed a position on that Board.

OPINION OF BOAW:

By bulletin dated November 30, 1977, Carrier abolished three positions on the Clerks' Extra Board at Cincinnati, Ohio. The abolishments were effective December 4, 1977. As a result of Carrier's action, the Extra Board was reduced from seven to four positions.

The Organization claims that Carrier's action violated the Agreement. The primary rule relied on by the Employees is Rule E-5, EXTRA YARD CLERKS. It states in relevant part:

RULE E-5 -- EXTRA YARD CLERKS

"(a) Where necessary, extra clerks may be employed on the following basis:

"(1) At yard offices, one extra clerk may be allowed to every five regular positions. If employed as above, an extra board will be maintained showing the names of extra clerks."

At the time of this dispute, there were twenty-seven regular positions at Cincinnati, Ohio. Therefore, the Organization asserts that pursuant to the ratio of **one** extra clerk to every five regular clerks, as specified in **Rule E-5**, Carrier was required to **maintain the Extra Board** at the full authorized strength of five. In the **Employee's** view, Carrier does not have the right to reduce the **number** of occupants on the Extra Board unless the **number** of regular **positions** fell **below** twenty-five.

Claimant, S. J. Toler, is the senior **employee** whose Extra Board position was abolished. The **Employees** asked that Carrier compensate **Claimant** in the amount she could have **earned** as an occupant of *the* Extra Board beginning with December 4, 1977, until **she** was allowed to return to the Extra Board on October 23, 1978.

Carrier, on the other **hand**, denied that **it** violated the **Agreement**. It insists that there is no Agreement support for the contention that an E-5 Extra Board **must be** maintained at its **maximum** authorized strength. It also contends that in light of Claimant's work record, the **monetary** portion of the **Employee's** **claim** is indeterminate.

Determination of the issue presented requires an interpretation of the **meaning** of **Rule E-5**. Even a cursory reading of the **Rule** establishes that the **tone** of the **Rule** is permissive in nature. The parties have agreed the determination of the need for an Extra Board **is** to be by Carrier. Carrier is given **the** right to determine whether an Extra Board is needed at a particular location. On this there **is** really no dispute.

The **Rule** goes on to say that, "one extra clerk may be allowed to every five regular **positions**." That is, Carrier is allowed to establish a **maximum** of one extra position for every five regular positions. A higher number of Extra Board positions is precluded. Stated simply, the parties have restricted the **maximum** number of positions on a given **Extra Board**.

Saving decided that **Rule E-5** contains a limitation on the **maximum** number of positions on an Extra Board, **the** question remains whether Carrier is also required to keep a **minimum** number of positions on the Board. In its evidence submitted on the property as well as its submissions to this Board, the **Employee** has argued that this additional restriction exists. Carrier disagrees with **the Union's** position insisting that there is no limitation on the **minimum** number of positions that must be maintained.

After analyzing the evidence **and** arguments submitted, we must conclude that there is no additional restriction on Carrier's right to establish and maintain an **Extra Board**. **As** such, the grievance **must** be denied.

The effect of the position taken by the Organization is that once an Extra Board has been established at the **maximum** level, Carrier would be required, forever, to keep that Extra Board at the **maximum**. This contention is without

merit. There is absolutely nothing in the language of Rule E-5 that can be viewed requiring Carrier to keep the Extra Board at the **maximum** strength. On the **contrary**, the language of Rule **E-5** is permissive **in** nature; it is not mandatory.

The Union would have us read an additional restriction into the **language** of Rule E-5. In effect, the Union asks us to rewrite the language of Rule **E-5-(a)-(1)** to state that at yard offices one extra clerk **must** be allowed to every five regular positions. We are neither inclined nor **empowered** to substitute the word **must** for the word **may**. Nothing could be more fundamental.

Absent a restriction **requiring** Carrier to **maintain** a **minimum** strength on the Extra Board, it is a well accepted labor relations principle **that** Carrier retains the exclusive right to operate its business as it sees fit. **It** has the right to determine whether or not an Extra Board of less than the **maximum** authorized strength is necessary. Here, there is nothing to **indicate** that that determination was either arbitrary or capricious. Thus, because the Organization was unable to meet its burden of establishing the Carrier is **bound** to **maintain** the Extra Board at the **maximum** authorized strength, we will **deny** the grievance in its entirety. A similar ruling was made in Award No. 3 of Public Law Board Number 647, Referee Dolnick.

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 Employee 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: _____


Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.