Award No. 3923
Docket No. CL-3938

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 Clerk A. M. Mehaffey 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 January 22, 1947, Clerk A. M. Mehaffey, Miami, who was assigned to a position necessary to the continuous operation of the carrier, was notified by carrier's Ticket Agent that effective Tuesday, January 28, the assigned relief day of his position would be changed from Monday to Thursday, and he was relieved on Monday, January 27, and again on Thursday, January 30, 1947.

POSITION OF EMPLOYES: In support of their claim, the employes 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 employes subject to the exceptions noted below:

"Group (1) Clerks—(a) Clerical workers

(b) Machine Operators.

"Group (2) Other office and station employes—such as office 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 employes necessary to the continuous operation of the carrier who are regularly assigned to

days." In his letter of May 2, 1947, reproduced as Carrier's Exhibit "G", 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 Employes 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.

OPINION OF BOARD: Petitioner claims a day's pay for Clerk Mehaffey on the ground his days of work in one week were reduced to five. In changing a number of positions necessary to continuous operation Carrier had to rearrange the assignments of a relief employe at Miami. In doing so claimant's relief day was changed from Monday to Thursday so that he was relieved both on Monday, January 27, 1947, and again on Thursday, January 30.

The question raised by Carrier is whether Rule 69 which provides for not less than 6 days work per week applies to an employe filling a position necessary to continuous operation, especially in view of the revision of the Sunday and Holiday Rule, No. 50, and a Letter Understanding between the parties made when such rule was revised.

Rule 69 (a) reads:

> "Nothing in this agreement shall be construed to permit the reduction of days for regularly assigned Groups 1 and 2 employes covered by this agreement below six (6) days per week, excepting that this number of days may be reduced in a week which holidays specified in Rule 50 occur by number of such holidays."

Rule 50 (a) (as revised) reads:

> "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 employes necessary to the continuous operation of the carrier who are regularly assigned to such service will be assigned one regular day off in seven (7), Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time. When such assigned day off duty is not Sunday, work on Sundays will be paid for at straight time rate.
>
> When a regularly assigned employe has an assigned relief day other than Sunday and one of the holidays specified in this rule falls on such relief day, the day following will be considered his holiday."

Carrier first argues it appears from its context that Rule 69 can only apply to employes holding six-day positions with Sundays and holidays off because the rule permits a reduction of the work week below six days in

the event of one of the holidays specified in Rule 50. Because employes in continuous operation positions may have to work on holidays, Carrier concludes they are thus excepted from Rule 69 by its terms.

However, we cannot agree. Rule 69 expressly applies to "regularly assigned Groups 1 and 2 employes covered by this agreement." There is no stated exception of employes in continuous operation positions, and we are expressly forbidden from reading one into the rule because the rule itself states "nothing in this agreement shall be construed to permit the reduction of days ** (for such employes) ** below six (6) days per week." The application of the rule is clear. It applies to each and every regularly assigned employe of Groups 1 and 2 whether filling a continuous operation position or a six-day position.

Carrier further argues that in revising Rule 50 the parties had in mind the seasonal and therefore fluctuating nature of Carrier's business which would necessitate many changes in positions from six-day ones to ones of continuous operation when business was heavy, and then vice versa when business became light. Carrier asserts the parties knew that such changing of positions would also require the changing of relief days from the usual Sunday off to any one of the seven days off. Yet, knowing such conditions would prevail Carrier points out that only one restriction about changing relief days was inserted in the Letter Understanding setting forth the agreed conditions on which Rule 50 was revised. That restriction is: "Therefore, as and when these changes occur (from six-day to seven-day basis, or vice versa) the incumbent will be notified." From this argument Carrier appears to contend that in changing relief days the six-day guarantee of Rule 69 would not apply and need not be observed.

The whole Agreement and the Letter Understanding must be read together and when this is done we find nothing whatsoever that takes the situation we have here resulting from the change in the relief day out of the application of Rule 69. When Rule 50 was revised and the Letter Understanding agreed to the parties must be presumed to have acted with full knowledge of Rule 69. We do find in the Letter Understanding an apparent exception to the operation of Rule 69. It states that assignments of less than six days per week may be established for relief employe positions by agreement of the parties.

Rule 69 is clear and unambiguous. Had the parties intended it should not apply to the situation in question, they should have stated so in an express exception mutually agreed to. Petitioner was not required to have the Letter Understanding, by express reference, confirm the application of Rule 69 to this situation. As part of the General Agreement its application covered every situation within the scope of the rule.

Even though assigned relief days may follow assigned positions rather than employes, still the six-day guarantee of the rule covers the employes rather than the positions. Furthermore, we do not find the rule is limited in its application to a calendar week as distinguished from a "work week." Its evident meaning is to guarantee six days work out of every seven, except for the specified holidays.

The Agreement involved in Awards Nos. 1814 and 1815 contained no counterpart of Rule 69. Discussions of a similar rule in Awards Nos. 783, 934 and 3723 appear to sustain our views.

It follows that the claim must be 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: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1948.