

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**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 Ticket Clerk L. W. Webb and Yard Clerk H. E. Chisholm for a day's pay, when, as a result of changing their assigned relief days, their days of work per week were reduced below six during the month of August, 1946, in violation of the provisions of Rule 69 (a).

EMPLOYEES' STATEMENT OF FACTS: On August 15, 1946, Ticket Clerk Frances E. Magruder, New Smyrna Beach, who was assigned to a position necessary to the continuous operation of the carrier, was notified by carrier's Superintendent that effective August 20, 1946, the assigned relief day of her position would be Tuesday, instead of Monday. Clerk L. W. Webb exercised displacement rights on this position effective August 16, 1946 and was relieved on Monday, August 19, and Tuesday, August 20.

On August 19, 1946, Yard Clerk H. E. Chisholm, New Smyrna Beach, who was assigned to a position necessary to the continuous operation of the carrier, was notified by carrier's Superintendent that effective August 24 the assigned relief day of his position would be changed from Thursday to Saturday, and he was relieved on Thursday, August 22, and again on Saturday, August 24.

POSITION OF EMPLOYEES: In support of their claim, the employees 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 employees subject to the exceptions noted below:

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

(b) Machine Operators.

"Group (2) Other office and station employees—such as 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."

summed up in another sentence of Section No. 4 of the Letter Understanding reading as follows:

"The Railway was induced to consent to the adoption of this Special Agreement and letter understanding through assurances given by representatives of the Brotherhood in conference discussions with representatives of the Railway, which are hereby stipulated, that the employees want nothing more than a rule to permit assigned employees to have one day of rest in seven (7), and pay at time and one-half rate for service required to be performed by any assigned employee on his assigned rest day."

These two documents, therefore, by joint announcement of the negotiators comprise the full agreement in respect of relief days in positions "necessary to the continuous operation of the Carrier" and are subject to no other provisions of the agreement with Clerks. They contain nothing which supports the present claims. In fact the Employees do not claim any such support exists in them, but instead rely on Rule 69 which is entirely without the scope of the full understanding and complete intention of the interested parties announced in the above quoted portion of the Letter Understanding.

The claims are, therefore, without merit and should be denied.

9. In his letter of May 1, 1947, quoted in Item No. 12 of the Carrier's Statement of Facts, the Chief Operating Officer stated that while Rule 69 and the Letter Understanding of February 16, 1945, do not support these claims "in order to avoid unnecessary correspondence, we will, in the future, when it is again necessary to make changes in assigned relief days, abolish the old positions and readvertise them with the newly assigned rest days." In his letter of May 2, 1947, reproduced as Carrier's Exhibit "C", 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 Employees have placed themselves in no position to charge anyone with sharp practice. They are progressing these claims 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.

Exhibits not reproduced.

OPINION OF BOARD: In this claim two clerks filling positions necessary to continuous operation had their relief days changed. Each one was relieved on both of two days reducing the number of days worked in a week by each to five in violation of Rule 69. That rule guarantees six days work per week.

In Award No. 3923 we sustained a claim involving the same situation and the same issues. This claim is between the same parties and under the same Agreement.

Accordingly, we must sustain this claim.

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 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 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.