

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Caller W. D. Riddell for a day's pay at pro rata rate for September 4, 1947, account of being relieved on Monday, September 1, and Thursday, September 4, 1947, in violation of agreement rules hereinafter cited.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 2, 1947, Caller W. D. Riddell was assigned to a position necessary to the continuous operation of the carrier with MONDAY as assigned relief day. On August 28, 1947, he was advised by the carrier's Superintendent that his position would be abolished effective at close of tour of duty September 2, and on the same date, in a separate letter, he was advised that the position would be reestablished Wednesday, September 3, with THURSDAY as assigned relief day.

On September 4, 1947, the General Chairman wrote the Superintendent as follows:

"On August 28, 1947, you addressed the following letter to Caller W. D. Riddell at South Jacksonville:

'Position No. 12, Caller at South Jacksonville will be abolished effective at close of tour of duty Tuesday, September 2.

You are cautioned of the importance of filing your name and address in accordance with provisions of Rule 19 (b) of Clerks' Agreement, if reduced to furloughed list.'

On the same date you wrote Mr. Riddell as follows:

'My letter date advising that position No. 12, Caller, South Jacksonville, will be abolished effective at close of tour of duty Tuesday, September 2.

This position will be reestablished effective Wednesday, September 3, with Thursday as assigned relief day.

Please advise if you desire to fill this position pending close of bids.'

in a full schedule of Relief Employee Assignments and get enough competent persons to fill them."

It will be seen from the facts in this case that the procedure followed by the Railway in abolishing and readvertising assignments when relief days are changed accord to the incumbents the same opportunity to move to another position that the General Chairman sought for them through the Revision of Rule 21. When an incumbent elects not to move, however, he wants pay for what is called a "lost" day although he might actually lose one or more days if he decided to displace upon another job.

In local handling the Employees have made reference to Rule 66 as supporting their claim. Reference to that Rule will show that none of the conditions covered by it are present in this case. They have also made reference to certain awards which deal with evasion of rules. That condition also is not present in the instant case. There is nothing in the agreement which restricts the right of the Railway to abolish a position or assignment and establish a new one when a change in relief days occurs. All that the Railway has done has been to exercise its right under Rule 69(b) and advertise new assignments under Rule 9.

The claimant had two relief days within seven on two different assignments through the free exercise of his seniority. The claim is, therefore, entirely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant W. D. Riddell was a regularly assigned Caller on a position necessary to the continuous operation of the Carrier with Monday as his assigned relief day. On August 28, 1947, Carrier's Superintendent by letter advised him that position No. 12, which was the designation of the position which he occupied, would be abolished at close of tour of duty Tuesday, September 2. On the same date the Superintendent sent him another letter referring to the one above mentioned, stating that the position would be re-established effective Wednesday, September 3, 1947, with Thursday as assigned relief day and requesting advice as to whether he (Riddell) desired to fill that position pending close of bids. Riddell replied in the affirmative. On August 30, 1947, Carrier advertised position No. 12, Caller, South Jacksonville, with the same hours and duties as the former position No. 12, the only difference being that the relief day was Thursday. Claimant bid on the purportedly new position and the same was awarded to him. The result of this procedure was that Claimant was required to take two relief days in seven.

Employees claim a violation of Rule 69 (a) which reads as follows:

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

Carrier argues: (1) that Rule 69 has no application to positions necessary to continuous operation of Carrier; (2) that the relief days were allowed under two different assignments; (3) that Agreements made on the property outside the collective bargaining agreement permitted the action taken; (4) that while it is a fact that Claimant had two relief days in seven, this was the result of exercise of seniority rights.

It appears that a similar controversy between these same parties was presented to the Board in Awards Nos. 3923 to 3927 which were companion cases. From a re-reading of the entire record in the docket upon which Award 3923 is based, it is apparent that the facts therein were practically identical with those presented herein except for the element of the purported abolition and re-establishment of the position. In that docket relatively the same contentions, with the obvious exception of that numbered (4), above, were advanced by the Carrier. However, in a well reasoned Opinion, with which we

agree, such contentions were resolved against it and a sustaining Award was issued. No purpose would be served by our restating the reasoning which led to the sustaining Award in that instance. Hence, as we view this matter, the only question to be determined is whether or not the purported abolition and re-establishment of position No. 12 furnishes a sufficient basis for a denial of the claim. We are convinced that it does not.

We recognize that Rule 69 (b) states that nothing therein shall prevent the abolition of a position at any time. However, we think it is quite clear that this position was not in fact abolished. All of the duties of the position subsisted, it received the same designation, it worked the same hours, the only difference was in the change of a relief day. Clearly this is not a bona fide abolition of an old position and establishment of a new one. We think the statement of this Board in Award 3884 fully supports this conclusion. Therein we stated:

"This Carrier assumes that the positions here were in fact abolished because the proper forms were used. That does not follow. First at least a substantial part of the duties of the position must have disappeared and second, there must be the actual intent to abolish the position. The Carrier may not use the prescribed procedure for abolishing positions for the purpose of evading its Agreement with the Employees."

It follows that a sustaining Award is in order.

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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.