

Award No. 4523
Docket No. CL-4358

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 Ticket Clerk Frances E. Magruder, at New Smyrna Beach, for a day's pay account of being relieved on August 17 and August 19, 1947, in violation of agreement rules hereinafter cited.

EMPLOYES' STATEMENT OF FACTS: Prior to August 18, 1947, Ticket Clerk Frances E. Magruder was assigned to a position necessary to the continuous operation of the carrier with SUNDAY as assigned relief day. On August 14, 1947, she was advised by the Carrier's Superintendent that her position would be abolished at end of tour of duty Monday, August 18, 1947, and on the same day she was advised that the position would be reestablished on August 19, 1947, with TUESDAY as assigned relief day.

On September 5, 1947, the District Chairman wrote the Superintendent as follows:

"According to my records, Frances E. Magruder has been assigned to Position No. 3, Ticket Clerk, New Smyrna Beach, since September 18, 1946. She was designated as an employee required for the continuous operation of the carrier and Sunday was designated as her assigned rest day.

On August 14, 1947, you wrote Ticket Clerk Magruder under your file 78 and 27 as follows:

'Position of Ticket Clerk No. 3 at New Smyrna Beach will be abolished effective at end of tour of duty Monday, August 18, 1947.'

As the word abolish means to bring absolutely to an end, annul or destroy, it would appear from your letter quoted above that the work attached to this position had diminished to the extent that the position was no longer necessary and was being discontinued at 6:00 P. M., August 18, which was end of tour of duty that day.

On August 18, 1947, you issued Bulletin No. 202-CL, advertising Position No. 3, Ticket Clerk, New Smyrna Beach, on a perma-

has proven to be nothing more than a wage increase proposition. Adoption of the request you make would lead to a great many seniority moves, particularly during the time we are unable to satisfactorily fill all of our Relief Employee assignments. I have no desire to add this condition to other uncomfortable aspects of the relief day rule at this time, and, although I am not making any promises, it is possible that I may feel differently about the matter at some future time when employment conditions normalize and we are able to put 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 her seniority. The claim is, therefore, entirely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The principle involved in this docket is identical with that involved in Award No. 4522. The material facts except for dates involved are identical. For reasons stated in the Opinion of the Board therein a sustaining Award is in order herein.

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.