# Award No. 14116
# Docket No. CL-15476

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Levi M. Hall, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

## ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5732) that:

1. Carrier violated the rules of the Clerks' Agreement at Kent, Ohio, when it abolished the following positions, effective February 5, 1963:

| | | |
|---|---|---|
| Relief Position No. 2 | | |
| Relief Position No. 3 | | |
| Chief Caller-Clerk | — | 4:00 P. M.–12:00 Midnight |
| Yard Clerk | — | 4:00 P. M.–12:00 Midnight |
| Yard Clerk | — | 12:00 Midnight–8:00 A. M. |
| Yard Clerk | — | 12:00 Midnight–8:00 A. M. |

2. (a) Carrier shall now be required to compensate Employe C. Gatts, one day at time and one-half rate in lieu of pro rata rate for February 9, 1963, account required to work his sixth day in the work week beginning February 4, 1963.

(b) Carrier shall now be required to compensate Employe S. L. Mandalari, one day at pro rata rate for Saturday, February 9, 1963 account of his work week reduced to four (4) days in the work week beginning February 5, 1963.

(c) Carrier shall now be required to compensate Employe J. E. Wendelken, one day at time and one-half in lieu of pro rata rate for February 6, 1963, account required to work one of his rest days in the work week beginning January 31, 1963.

(d) Carrier shall now be required to compensate employe W. D. Lengacher, one day at pro rata rate for Thursday, February 7, 1963, account of his work week being reduced to four (4) days in the work week beginning February 3, 1963. (Claim No. 1418.)

subject to adjustment by mutual agreement with the duly accredited representative, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

is most emphatically without merit. As evidenced by the heading and language of this rule, it only applies to rates of positions and rules relating thereto. The Relief Clerk No. 2 position was the only one involving a change in rate, and this was brought about because the force was reduced and rearranged from seven (7) to five (5) positions. Thus, there can be no successful argument that changing the rate of this position was to evade the application of the rules. Petitioner argues that by taking the language of Rule 31 "established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of * * * evading the application of these rules" out of context has the sense and meaning of restricting Carrier from abolishing and establishing new positions where a change in hours, work week, rest days, etc., are involved. Rule 31, like all other rules, must be read and interpreted in its entirety as written, and when this is done there is just no support for Petitioner's argument that by taking certain language of Rule 31 out of context, it restricts Carrier's action in this case. Carrier has historically reduced and rearranged forces in the same manner as followed here and there is no record in our files of any other such claim having been made by Petitioner. This Board considered a similar rule in deciding Award 8231 and 10021, and there it was recognized that the rule only applied to abolishing positions and establishing new ones involving changes in rate. It should be so held here by this Board.

Carrier has herein established that no rule of agreement restricted it from abolishing all seven (7) positions and advertising five (5) new ones. Therefore, as each claimant definitely transferred from one assignment to another in the exercise of seniority by bidding and being awarded a new assignment, their claims have no substance under any rule of agreement. Carrier at this point directs attention to the fact that claimant S. A. Mandalari was on fifteen (15) days' vacation during period for which claim is made, and, therefore, lost nothing in any event.

Based upon the facts, reasons and authorities cited, Carrier submits that this claim is totally without merit, and should be denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On January 29, 1963, Carrier issued a bulletin abolishing Relief Position at Kent, Ohio, effective February 5, 1963, the incumbent of this position at the time of its abolishment being W. D. Lengacher, one of the Claimants herein. On January 30, 1963, Carrier issued a bulletin reestablishing this Relief Position at Kent, the vacancy being awarded to Lengacher.

On January 30, 1963, Carrier issued a bulletin abolishing the position of Yard Clerk at Kent, Ohio, effective February 5, 1963, the incumbent of this position at the time of its abolishment being S. L. Mandalari, one of the Claimants herein. On January 31, 1963, Carrier issued a bulletin reestablishing this position of Yard Clerk at Kent, the vacancy being awarded to Mandalari.

On January 30, 1963, in the same bulletin as immediately above, Carrier abolished the position of Chief Caller-Clerk at Kent, Ohio, effective February 5, 1963, the incumbent of this position at the time of its abolishment being John E. Wendelken, one of the Claimants herein. On January 31, 1963, Carrier issued a bulletin reestablishing this position of Chief Caller-Clerk at Kent, the vacancy being awarded to Wendelken.

On January 30, 1963, Carrier issued a bulletin abolishing the position of Yard Clerk at Kent, Ohio, effective February 5, 1963, the incumbent of the position at the time of its abolishment being C. Gatts, one of the Claimants herein. On January 31, 1963, Carrier issued a bulletin reestablishing this Yard Clerk position at Kent, the vacancy being awarded to Gatts.

It is uncontroverted that the successful applicants for the four new positions allegedly established on February 5, 1963, were the occupants of four comparable positions at the same location prior to that date.

The record is clear that the workweek of Mr. Gatts commenced on Monday; Mr. Mandalari's workweek commenced on Tuesday; Mr. Wendelken's on Thursday; and Mr. Lengacher on Sunday. The abolishment of the regular positions to which these employes were assigned and reestablishing them with change in rest days had the effect of Mr. Gatts working on the sixth day of his workweek at straight time; Mr. Mandalari and Mr. Lengacher having their workweek reduced to four (4) days and Mr. Wendelken being required to work on one of his two earned rest days at straight time.

With respect to these four positions allegedly established by the Carrier on February 5, 1963, the Board is of the opinion that there was not a bona fide abolishment of the positions, but the net results were simply a change of the rest days of the four positions. See Awards 4522, 4523 (Robertson); Award 12990 (Hall).

This Board has consistently held that where the assigned workweek has been reduced to four days, due to a change in rest days as indicated in two of the positions, the employe affected is entitled to be compensated one day's pay for the fifth day at the pro rata rate under the guarantee rule of the Agreement.

Where the assigned rest days are changed, the result of which causes employes to work more than five consecutive days computed from the previous rest days, the employes affected are entitled to time and a half payment for the sixth or seventh day. One of the early Awards reaching this conclusion was one between the same parties involved herein and on the same property, Award 7319, Carter. This same award has been cited favorably in many subsequent awards.

Applying the above principles to the situation here presented, the Board finds that Claimants S. L. Mandalari and W. D. Lengacher are each entitled to one day pro rata pay, under the guarantee rule, and Claimants C. Gatts and J. E. Wendelken are each entitled to the difference between the straight time rate and the time and a half rate for the day they worked beyond their regular five day assignment.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement has been violated.

AWARD

Claim 1 – Sustained;

Claim 2 – a, b, c and d allowed in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.