



Award No. 16623

Docket No. CL-17220

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6298) that:

1. Carrier violated the rules of the Clerks' Agreement and the National Vacation Agreement of December 17, 1941, as amended, when it failed to pay Ticket Clerk Joseph H. Feinberg while on vacation, the rate of the position he actually worked at the time he went on vacation.

2. Carrier shall now pay Claimant the difference between \$23.82 per day and \$23.004 per day for a period of twenty (20) days covering the period November 15, 1965 to December 10, 1965, both dates inclusive, while he was on vacation. (Claim 1734.)

EMPLOYEES' STATEMENT OF FACTS: Claimant Feinberg held five day position of Ticket Clerk at Hoboken, N. J., rate \$23.82 per day, assigned hours 5 P. M. to 1 A. M., rest days Saturday and Sunday. Mr. Feinberg's scheduled four (4) week vacation period commenced November 15, 1965 and ended December 10, 1965.

On or about November 10, 1965, the Carrier posted an undated bulletin, NYD-A-138, A-139, notifying employees concerned of the abolishment of two (2) Ticket Clerk positions at Hoboken, N. J. to be effective 12:01 A. M., Sunday, November 14, 1965. (Employees' Exhibit A.) Bulletin A-139 abolished the Ticket Clerk position held by the Claimant J. H. Feinberg.

Prior to the date Claimant was scheduled to start his vacation (November 15, 1965) and prior to the effective date of the abolishment of his Ticket Clerk position (November 14, 1965), Mr. Feinberg filed a written displacement dated November 11, 1965 with Passenger Trainmaster-Terminal and Mail Supervisor Flynn, indicating his desire to displace on another Ticket Clerk position, rate \$23.004 per day, however, inasmuch as Mr. Feinberg would be unable to make a physical displacement prior to leaving on vacation, such a written displacement is generally referred to on this property as a "paper bump."

the abolished Night Ticket Agent position. Claim was denied under date of January 12, 1966, and thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters where it was discussed in conference and denied, with denial confirmed under date of October 31, 1966.

There is no dispute concerning the facts, only over the compensation paid claimant.

OPINION OF BOARD: Claimant was the regular incumbent of ticket clerk position, which carried a rate of \$23.82 per day and was assigned to work Monday through Friday with Saturday and Sunday as rest days. He was scheduled to begin his vacation on Monday, November 15, 1965. By bulletin, posted on Wednesday, November 10, 1965, Claimant was notified that his position would be abolished effective 12:01 A. M., Sunday, November 14, 1965. On Thursday, November 11, 1965, Claimant filed written request to displace on ticket clerk position, rate \$23.004 per day, but did not make actual physical displacement on the position until after he returned from vacation. As vacation pay Carrier paid Claimant at the \$23.004 daily rate and the claim is for the difference between that rate and the \$23.82 daily rate per day for each day of the twenty-day period he was on vacation.

Under Rule 12 Carrier was obligated to give Claimant 5 working days' advance notice of the abolishment of his position and the bulletin notice, posted on Wednesday, November 10, 1965, could not properly have been effective before Tuesday, November 16, 1965. Accordingly, it is our view that since the position was not contractually abolished until Tuesday, November 16, 1965, the Claimant was still the incumbent of the position when he began his vacation on Monday, November 15, 1965, and is therefore entitled to be paid at the rate of the position he occupied prior to going on vacation.

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 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 the Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1968.

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