

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22508
Docket Number CL-22595

John J. Mangan, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{ Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8584), that:

1. Carrier violated the Agreement between the parties when on January 27, 1977, they abolished the position of second trick Clerk's position at Kinney Yard on the Norfolk Division and since then has used Extra Board Clerks to fill the position and/or used the regular trick clerks to work overtime instead of reestablishing the position as called for under the April 1, 1973 Agreement.

2. As a consequence of the above stated violation Carrier shall now be required to compensate the senior available furloughed employee for each date this position was worked and is filled by Extra Board clerks and/or worked overtime by the regular assigned clerks. This pay to be based on the applicable pro rata rate of the position. This claim shall commence Monday, March 20, 1977 and continue until this violation is discontinued or the position is reestablished. The senior available furloughed clerk to be determined by a joint check of the Carrier's records and also the days this position is filled or worked overtime will be determined by a joint check of the Carrier's records. (ERAC Exhibit 1)

OPINION OF BOARD: (Prior to turning to the merits of this dispute, we must deal with the Carrier's arguments that the claim before the Board has not been timely presented and is therefore barred from our consideration. The Carrier argues that a position was abolished on January 27, 1977 and that a claim was not filed until May 17, 1977 claiming compensation retroactive to March 20, 1977. This, they argue, is not in accord with Rule 38(a) in that the claim was not filed within sixty (60) days from the date of the occurrence on which the claim is based. The Organization argues that the claim is proper in that it is a continuing claim filed under Rule 38(d) and as such it may be filed at any time except that no money can be claimed retroactively for more than sixty (60) days prior to the filing date. We are persuaded that the Organization's contentions are correct, that the claim before us is one of a continuing nature and fits within the parameters of the National)

{ Disputes Committee DECISION NO. 21. See also Awards 13651 (Englestein) and 21782 (Eischen). We will consider the claim on its merits. }

2 On January 27, 1977 the Second Trick Yard Clerk Position at Kenney Yard was abolished. The remaining work on the position was in the main assigned to either the First Trick Yard Clerk Position or to the Third Trick Yard Clerk's Position. However, on occasion, the First Trick Yard Clerk worked overtime into the hours within the time assignment of the abolished Second Trick Yard Clerk. Also, the Carrier, on occasion, utilized an Extra Board employe to perform extra work within the hours of the assignment of the abolished Second Trick Yard Clerk Position. The Organization argues that this occurred with sufficient regularity to require the bulletining of a regular assignment.

The Organization argues that Carrier's actions violated Rule 12 of their agreement, particularly paragraph (g), reading:

3 "(g) New positions or vacancies of thirty calendar days or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such new positions or vacancies will extend beyond the thirty-day limit, they shall be immediately bulletined showing, if practicable, probable or expected duration."

4 The Carrier disputes this. There is some evidence in the record that indicates during one time span the "position" was filled in one fashion or another on what would have been fifty per cent of its assigned work days. There is other evidence covering a longer time period that shows that the "position" was "worked" only seventeen per cent of the time. The record also discloses that for two separate three month periods no work was performed at all during the hours of the abolished assignment. From this and other evidence on the frequency of work we must conclude that the Organization has failed to establish that Rule 12(g) of their agreement was violated.

We will deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.