

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22759
Docket Number CL-22783

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood
(GL-8687) that:

1. Carrier violated the Agreement between the parties when it arbitrarily, capriciously, and without proper notice, abolished the third trick Block Operator position at CH Tower and discontinued Relief Position C-133 on December 20, 1977.

2. Carrier shall, as a result, compensate James F. Henderson, \$280.38 per week commencing December 26, 1977 and continuing until April 4, 1978.

OPINION OF BOARD: The claimant in this case was assigned to Relief Block Operator position No. C-133 which is scheduled as follows:

Monday	7 a.m. - 3 p.m.	CH Tower
Tuesday	3 p.m. - 11 p.m.	CH Tower
Wednesday	11 p.m. - 7 a.m.	CH Tower
Thursday	11 p.m. - 7 a.m.	OA Tower
Friday	11 p.m. - 7 a.m.	OA Tower
Saturday	Rest Day	
Sunday	Rest Day	

On Monday, December 19, 1977, claimant began the observance of one week of his scheduled vacation.

Subsequently, on December 20, 1977 by bulletin notice No. 57, the third trick block operator position at CH Tower, among others, was abolished in accordance with the emergency provisions of Rule 42(c) of the applicable Rules Agreement which provides:

"(c) Rules, agreements or practices, however established, that require advance notice to employees before abolishing positions or making force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (d) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four (4) hours' pay at the applicable rate for his position. If an employee works any portion of the day, he will be paid in accordance with existing rules."

This same bulletin notice No. 57 also contained advertisements which included other relief work days at CH Tower formerly incorporated in claimant's relief assignment No. C-133. This advertising bulletin was programmed to permit employees to submit applications "for a period of six (6) calendar days" or until December 26, 1977. Claimant bid for and was awarded, effective December 27, 1977, one of the relief operator positions (No. C-426) bulletined.

By letter dated January 10, 1978, Claimant Henderson initiated the claim which is the subject of the instant dispute.

Following our complete review of the conflicting charges, counter charges and evidence as contained in this record, we must conclude that this Board has neither the authority nor the competence to properly weigh such conflicting evidence.

Carrier's assertions relative to the separate, unnumbered, supplemental abolishment notice which was allegedly sent via U.S. Mail to claimant's home on December 20, 1977 are - on the surface - seriously suspect. Additionally, the conflicting, contradictory

statements and evidence presented by Petitioner both in the on property handling of this case as well as in its Ex Parte Submission to this Board leave us with an irreconcilable conflict in the basic facts necessary to arrive at a proper resolution of this dispute. What was said in Third Division Award No. 16152 (Ives) has equal application here. There, we found:

"Analysis of the conflicting evidence offered by the parties in support of their respective positions discloses an irreconcilable conflict of facts, and it is well established that the burden of proof rests with the Claimant in such disputes. Awards 15597 and 15765.

"Even if the affidavit offered by Petitioner is considered timely, this Board has neither the authority nor competence to properly weigh such conflicting evidence presented during the handling on the property. Therefore, we must conclude that Petitioner has failed to establish facts sufficient to require or permit a finding that Carrier violated the provisions of Rule 56-II(d) on the specified dates of claim. Awards 15597, 15588, 14947 and others. Accordingly, the Claim will be denied." (Underscore ours)

See also Third Division Award Nos. 19702, 19939, 20408.

We have no recourse but to dismiss this case.

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

Award Number 22759
Docket Number CL-22783

Page 4

That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

