

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

ERIE RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the carrier violates the rules of the Clerks' Agreement at Chicago, Illinois when on Saturdays, it utilizes individuals, holding no rights to the performance of Roster "B" work to perform such work on Saturdays only, and,

That carrier shall compensate employes H. Bennett, P. Sonetz, L. Haske, J. Yurik, J. Frederico, J. Frederick, S. Nice, M. Gospodnovich, J. Sortine, F. D'Angelo, E. Donegan, J. Hlubory, J. Basemore, R. Goldsmith, C. Rensch, C. Harling, G. O'Hare and all other employes holding seniority on Roster "B" No. 24 Marion Division, who were deprived of overtime by using individuals holding no rights under the Clerks' Agreement, at time and one-half rate for eight hours each Saturday, retroactive to October 1, 1949, and,

That carrier shall assign overtime work on Saturdays to employes holding seniority under the Clerks' Agreement, in seniority order and compensate such employes at overtime rates of pay.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to October 1, 1949, overtime work at 14th Street, Chicago, Illinois, was assigned to and performed by employes coming within the scope and coverage of the Clerks' Agreement.

On September 27 and 28th, 1949, the Carrier ran an ad in the Chicago Daily News reading as follows:

'FREIGHT HANDLERS  
Experienced  
For Work on Saturdays  
ERIE RAILROAD  
14th and CLARK'

A large number of men responded to the advertisement and about 20 were instructed to report for work. On Saturday, October 1, 1949, seventeen (17) men were put to work. None of these men reported out for work in accordance with Agreement provisions. On subsequent Saturdays varying numbers of men have been utilized in accordance with the newspaper advertisement.

This claim was initially presented to carrier's agent, Mr. Smith in Chicago on October 4, 1949, as evidenced by Division Chairman Slaughter's letter dated Bellwood, Illinois, that date (Employes' Exhibit B).

The First, Third and Fourth Divisions of the National Railroad Adjustment Board have held that consideration is restricted to claims of named parties for specified dates and locations. See First Division Awards 11293, 11642 and 12345; Third Division Awards 549, 906, 1566, 2125, 3103, 4304, 4372 and 4576; Fourth Division Award 206.

Carrier denies violation of Agreement rules and states that claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute involves the claim that the Carrier, at Chicago, violates the rules of the Clerks' Agreement when on Saturdays only it engages the services of persons holding no rights under the contract to perform work delegated to "Roster B" employes. The Organization holds that the Carrier should assign that work to employes on the seniority roster under the Clerks' Agreement in the order of their seniority.

The Carrier first objects to the Board considering the claims of unnamed persons under the designated category "all other employes", because, the Carrier says, this would be in violation of Rule 42, "Claims for Compensation", quoted elsewhere in this record.

The objection is without merit. Rule 42 is primarily a safeguard against stale claims. It contemplates the filing of class actions where more than one claimant is involved, since the right of the "duly accredited representative" to file and prosecute claims on behalf of its members is recognized. To require the filing of separate claims would result in a multiplicity of claims and would but serve to encumber the record. Particularly is this true where there is the possibility, as here, of a continuing violation. While it would be the better practice to name all persons seeking redress in the one claim, the Board frequently entertains claims for compensation where no employes are named. See Awards 3251, 3256, 3687. The reason therefor is manifest. The Board's primary function is to settle disputes involving fundamental differences between parties to an agreement, leaving to them the details of applying its Awards.

In Awards relied on by the Carrier in its brief, to support its objections, claims were entertained in all but one case. Award 4372, by inference, lends some support to the Carrier's position. There the claim was remanded for further handling, after it had been observed that the Carrier had written twice for the names and finally was given the name of one employe whose claim had been denied initially and no appeal taken. In the instant case the Carrier made no objection of record to the form of claim until it had reached the Board. Being of the opinion that to follow Award 4372 and remand the claim would serve no purpose other than to delay settlement of the dispute, and no good reason being assigned why the Carrier would be at a disadvantage in applying such Award as may be made, the Board finds no merit in the Carrier's objections.

On the merits of the case, the Board finds an equal lack of support for the Carrier's position. That which is being attempted in the subject case is patent on the face of the record to be an invasion of the Scope and Seniority Rules of the Agreement. Those rules are based initially upon the type of the work and the employes to be assigned to it. Seniority is inseparably welded to work covered by the Scope Rule. If they become divorced in the minds of the parties, then the rules lose all their meaning and become only a paper designation. In short, the right of senior employes to the work covered by the Scope Rule is the warp on which the whole fabric of the contract is woven. To remove either from the contract, or to permit their meaning to become confused in the minds of the parties is to effectively destroy the Agreement for all practical purposes.

This Board has been long committed to the view that the delegation of work to a class covered by Agreement belongs to those for whose benefit

the contract was made. A delegation of such work to others not covered by the Agreement is violative of the Agreement. Awards 3868, 3860, 3955.

It avails the Carrier nothing, in the opinion of the Board, that all employees of "Roster B" had received 40 hours' work during the weeks in question. Rule 20 (d) states that "regularly assigned employees will be given preference when overtime is necessary on their positions." Because the work is outside an employee's regular hours of assignment does not grant the Carrier the right to assign the work to persons not covered by the Agreement. Award 4933.

The phrase "regularly assigned to class of work" has been interpreted to apply to employees who perform such work regularly. Awards 4599, 1630. It follows, therefore, that persons who are only casually and intermittently in the Carrier's employment may not replace employees who are on regularly assigned positions, just because the work falls outside regularly assigned hours.

The Carrier places emphasis on the need to supplement its forces from time to time to take care of fluctuations in the work load. It says Rule 20-3 (f) gives it this right. A careful analysis of Rule 20-3 (f) leads to the inescapable conclusion that it is designed for apportioning overtime among employees regularly in Carrier's employment. Extra and unassigned personnel are to have preference over employees regularly assigned to the position where the regular employee has had 40 hours' work that week and the extra or unassigned employee has not. The extra and unassigned employees to whom reference is made are those who are on "Roster B", which, obviously was set up to take care of the fluctuations to which the Carrier alludes. Whatever may be said about the Carrier's rights under the rule to augment its forces temporarily during peak periods of full employment, the rule, when considered with other rules of the Agreement, does not deprive senior employees of their rights under the Agreement. To bring persons onto the property, without through the very nature of their casual and intermittent relationship can never acquire a status on the seniority roster, and give them work in preference to senior employees is to defeat the rights of the senior employees, a practice long frowned on by the Board. By analogy, it is closely akin to "farming" work out, something to which the Board has refused to give its blessing. See Award 906 and those therein cited.

It is with understandable vigor that the Organization opposes hiring persons for one day a week, who, by the very nature of the hiring, owe a divided allegiance to the employer and none to the Organization. As observed by this Board in Award 717, "every Organization expects the work falling within the scope of their agreements with the Carrier to be performed by employees on the official seniority list." The hirings which provoked this controversy involved persons employed one day per week who thereby can never attain a place on the official seniority list and whose relationship with the employer falls short of being a bona fide employer-employee relationship, because, unlike those whose names are on the official seniority list, the hiree does not approach the position with the desire, intention and expectation to become an employee subject to call and assignment at all times with readiness to serve, as provided in the labor agreement which governs the work. It cannot truthfully be said that they are the employees for whose benefit the contract was made, so a delegation to them of work covered by the Agreement is to give work to those not covered by the rules, which, as above indicated, is violative of the Agreement. Also, see Awards 3763 between the same parties to this dispute.

Having concluded that the contract was violated, there remains the matter of determining the rate of pay at which the senior employees who lost time from their positions are to be compensated. By the great weight of authority, the employees are entitled only to pro rata pay. The minority view, by which the employees are paid for time lost at appropriate rates of pay (in this case one and one-half times the regular rate where overtime is involved) has been

invoked by this Board, however, for violations of this same contract, so it is not considered a departure from precedent to again impose it here. See Awards 4025, 4866. It appearing from the type of violation that it was a studied attempt to evade the overtime provisions of the contract and did not come about through inadvertence there appears justification for compensating claimants for the loss sustained rather than pro rata.

Therefore, it has been concluded that all employes who have sustained a loss of pay by reason of the rules violations in question be compensated at the contract rates of pay instead of on a pro rata basis.

Since there is implied a continuing violation of the Agreement and the claim is insufficient for the Board to determine who of the Carrier's employes are affected by name and in line of seniority, the case is remanded for adjustment of all claims in accordance with these views.

**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 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 as stated in the Opinion.

#### AWARD

Claims sustained to the extent shown in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1950.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

---

**Interpretation No. 1 to Award No. 5078**

**Docket No. CL-5087**

**NAME OF ORGANIZATION:** The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

**NAME OF CARRIER:** Erie Railroad Company.

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Pay employes named in claim and all other employes holding seniority on Roster "B" No. 24, Marion Division, in order of seniority who sustained loss of pay by reason of persons working Saturdays who held no rights under Clerks' Agreement. On those Saturdays, when named employes worked, pay unnamed employes who sustained loss of pay in order of seniority for number of positions worked on Saturdays by persons other than those having rights under Clerks' Agreement.

Contention of Carrier that additional force employes are required by agreement to make themselves available for work, was not expressly raised and argued in original submission and may not now be raised for first time in connection with request for interpretation. Accordingly, proper application of Rule 23 (c) involving new disputes on the property remains open for consideration in appropriate cases, but may not be urged here for first time in protest to payment of unsettled claims under Award in instant docket.

Referee A. Langley Coffey who sat with the Division, as a member, when Award No. 5078 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 25th day of July, 1951.