

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**Third Division**

Robert G. Corwin, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES  
THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY**

**DISPUTE.—**

"Claim of Mr. Jerome Hooven and F. W. Heard, Loaders, Buffalo Food Terminal, Buffalo, N. Y., for payment in accordance with Rule 38, of Clerks' Agreement, effective July 1st, 1924, and Rule 26, of Clerks' Agreement, effective January 1st, 1936, for overtime worked by Mr. Hooven on November 11th, 1935, and Mr. F. W. Heard on November 25th, 1935, and subsequent overtime worked. Claims of Mr. J. Engelder and Mr. S. Preisch for payment in accordance with Rule 45, of Clerks' Agreement, effective July 1st, 1924, and Rule 27 (d), of Clerks' Agreement, effective January 1st, 1936, for work performed on Sunday, November 24th, 1935, and subsequent Sunday work at time and one-half basis. Claim is also made for employees who were worked on similar basis and incorrectly compensated at pro-rata rate."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

An agreement was in effect between the parties bearing effective date of July 1, 1924. This was succeeded by an agreement now in effect dated January 1, 1936.

The case being deadlocked, Robert G. Corwin was appointed Referee to sit with the Division as a member thereof.

The claims presented in this docket should be allowed under former awards and the rules cited if the evidence indicates that positions of Nickel Plate (N. Y. C. & St. L. Railroad Company) employees had been removed from the operation of the Clerks' Agreement and as such transferred to Erie Railroad supervision. It is contended that the submission does not substantiate such a fact. It must be admitted that the record is rather meager in its support of this essential element upon which alone an allowance of the claims in this dispute can be properly predicated. But in the interest of securing an adjustment we shall endeavor to make the most of it.

It appears from the position of the parties that in March 1931 the Erie Railroad opened a food terminal at Buffalo as a new facility. Through some arrangement with the Nickel Plate, not in evidence, it was provided that shipments of foods as freight over the latter might be received and unloaded at this terminal. Without consultation with its employees the carrier agreed with the Erie that this freight should be handled by employees of both roads on a practically fifty-fifty basis, but that all of the latter should be paid by the Erie and work under its rules. No complaint arose until in November 1935 after certain employees of the Nickel Plate had displaced juniors on their positions at the terminal. These men demanded payment for overtime and time and a half for Sunday work under the Nickel Plate rules constituting their collective agreement with it. In its earlier position the carrier claimed that its right to effect its

arrangement with the Erie was unquestionable and the importance of establishing the fact that employes of the Nickel Plate had been deprived of work which had formerly belonged to them seems to have escaped their representatives. A rather strong inference to that effect may be drawn from the evidence, but it is not altogether conclusive. This division has repeatedly held that if employees are deprived of service which had been and in the usual course of the carrier's business should be theirs, that their rights remain except as they may be modified through negotiation. It is, however, conceivable that a new facility might be established on the property of a connecting line that would give rise to work which the employees of the delivering railroad had never enjoyed and would not otherwise have been afforded.

In order to avoid delay in the settlement of the dispute we find that the claims of the petitioners should be allowed if it can be shown that work of the character now performed at the Erie Food Terminal was in part previously performed by employees of the Nickel Plate elsewhere at its Buffalo Freight Terminal.

#### AWARD

Claims to be adjusted in accordance with the foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 9th day of November, 1936.