

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement when on April 3, 1942 it assigned Mr. J. Dowdell to vacancy covered by Bulletin No. 21 on New York Terminal Division at Weehawken-Croxtan, N.J. instead of J. J. Frankini, a senior qualified applicant, and

That J. J. Frankini be assigned to the position covered by Bulletin No. 21 and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. J. Frankini is employed as checker Jersey City Docks and is paid \$5.92 per day.

On March 18, 1942 position of Foreman, Weehawken-Croxtan, rate \$210.60 per month, was advertised under Advertisement Bulletin No. 21. Mr. J. J. Frankini, who entered service on February 1, 1926, bid on this position which was assigned on April 3, 1942 to J. Dowdell, who entered service on February 5, 1934.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties bearing effective date of September 1, 1936 from which the following rules are quoted.

Rule 1 (Scope) reads as follows:

"These rules shall govern the hours of service and working conditions of the following employes of the Erie Railroad System Lines, Subject to the exceptions noted below:

"Group 1. Clerks as defined in Rule 2, including baggage agents, foremen, assistant foremen, receiving clerks, delivery clerks, checkers, flag clerks, ballot collectors, icing inspector, sectional storekeepers, leading stockkeepers, stockkeepers, chief stockmen, car receivers and checkers (Stores Department), brass checkers (Stores Department), train and engine crew callers, telephone switchboard operators, way-bill or ticket sorters, messengers, office boys and others performing similar work.

"Group 2. Station baggagemen, gatemen, ushers, matrons, station, freight, house, transpier, pier and warehouse forces, such as callers, loaders, stowers, sealers, coopers, truckers, tractor operators, firemen, car cleaners, mail handlers, janitors, and watchmen not having police authority, also storehouse forces such as power truck operators, chauffeurs, furnacemen, crane engineers, laborers and others performing similar work in connection with any of these operations.

3. The Memorandum of Understanding September 29, 1941 was intended specifically to be applicable to such situations, and when the position was bulletined it was shown that the "seniority provisions of the promotion, assignment and displacement rules and the basic day and overtime rules * * * will not be applicable."

OPINION OF BOARD: The first question to be determined, for a proper resolution of this dispute, is: Is the position of Foreman, Weehawken-Croxtan, established by Bulletin No. 21 on March 18, 1942, covered by all of the provisions of the Rules Agreement, as contended by the petitioner, or does this position come under exceptions to Rule 1, or is it covered by the Memorandum of Understanding, as contended by the Carrier, and thereby excepted from the seniority provisions of the promotion, assignment and displacement rules and the basic day and overtime rules of the Rules Agreement?

If this contention of the Carrier is found to be sustained, it is conceded by the petitioner that he has no claim that the seniority provisions of the agreement were violated by the assignment of Mr. Dowdell instead of Mr. Frankini to the position in question.

The Memorandum of Understanding of September 29, 1941 is an amendment to the Rules Agreement of September 1, 1936. This Understanding provides that at Freight Houses, Transfers and Dock Operations where there are now established positions of General Foreman, Dock Foreman and Foreman (except as to 28th Street), not here involved, which are excepted from application of the Clerks' Rules and Regulations dated September 1, 1936, similar positions may be added and such new positions will thereafter be subject to these Rules and Regulations.

Rule 1—Scope—of the Rules Agreement placed foremen and assistant foremen within the scope and operation of all rules thereof, except certain of such then existing positions at points named under Exceptions, sub-heading "Various," pages 13 and 14 of the Rules Agreement. The positions excepted from the Scope Rule at Weehawken were General Foreman and four (4) Dock Foremen on days and two (2) Dock Foremen on nights. At Croxtan the positions excepted were General Foreman and Foremen. There were no exceptions as to a position of Assistant General Foreman, or a Foreman at Weehawken-Croxtan, because no such positions existed on the date of the Rules Agreement, September 1, 1936, or on the date of the Memorandum of Understanding, September 29, 1941.

The Memorandum of Understanding, September 29, 1941, reads:

"MEMORANDUM OF UNDERSTANDING

"It is mutually agreed that, at Freight Houses, Transfers and Dock Operations where there are now established positions of General Foreman, Dock Foreman and Foreman (except at 28th Street is applicable to General Foreman only) which are excepted from application of the Clerks' Rules and Regulations dated September 1, 1936, similar positions may be added and such new positions will thereafter be subject to these Rules and Regulations. The seniority provisions of the promotion, assignment and displacement rules and the basic day and overtime rules will not apply to such positions.

Signed for the Employes:
By (sgd) J. J. Schreur
General Chairman"

Nevertheless, the Carrier bulletined the position, not because of Rule 7 of that Agreement but because:

"When the Memorandum of Understanding was signed, the General Chairman asked that any such new positions be bulletined in the regular manner, except that bulletin would not show hours of service and would carry a special notation to the effect that seniority provision of the promotion, assignment and displacement rules of Rules and Regulations effective September 1, 1936 will not be applicable."

The bulletin stipulated that "The seniority provisions of the promotion, assignment and displacement rules and the basic day and overtime rules of Rules and Regulations September 1, 1936 will not be applicable," all in accord with the Memorandum of Understanding.

The position here involved is one covering the ground storage of export Lease Lend or Government Freight which could not be stored at Weehawken, N. J., because of lack of space, and is located at Croxton, N. J., which is approximately three miles west of Weehawken where space was available for ground storage. This storage and the position are under the supervision of the agent at Weehawken.

Position involved is that of Foreman. The petitioner contends that in view of the fact that there is no location specifically appearing and designated as Weehawken-Croxton in the Exceptions to the Scope Rule of the September 1, 1936 Agreement, the position is not covered by the Exceptions.

This contention of the petitioner cannot be sustained. Weehawken and Croxton are excepted under the rule. The new location necessitated by extra work which could not be handled at Weehawken is in Croxton, only three miles away from Weehawken, and is under the jurisdiction and supervision of the agent at Weehawken. The situation is no different than if the new location and appointment had been made by reason of additional work at either Weehawken or Croxton. Weehawken-Croxton can only mean a name for a designated station at the storage place covered by the exception, adopted as information to employees. Supposing instead of calling it Weehawken-Croxton, the Carrier had designated it by number or letter, such as Weehawken or Croxton storage place 2 or B to distinguish it from the storage places then in existence at either Weehawken or Croxton, would it be contended that the work would not have been conducted under the Weehawken office and would not have come within the exception? We think not. It therefore follows that a new designation of a new work place added to the original ones, made part of them and under the same jurisdiction and supervision, is not controlling and is of no consequence.

It will be noted that the storage places and work performed therein, both at Weehawken and Croxton, are under the supervision of the agent at Weehawken, and that the location designated as Weehawken-Croxton is purely an extension of work, normally taken care of at Weehawken, to a ground storage location in the adjacent territory called Croxton, necessitated by reason of additional work which could not be performed and taken care of at Weehawken.

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 employe involved in this dispute are respectively carrier and employe 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 location and appointment come under the Exceptions to the Scope Rule and are covered by the Memorandum of Agreement made part of the Scope Rule.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of October, 1943.