

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. Welsh to vacancy covered by Bulletin No. 20 on New York Terminal Division at Weehawken-Croxtan, N. J. instead of A. W. Barber, a senior qualified applicant, and

That A. W. Barber be assigned to the position covered by Bulletin No. 20 and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. W. Barber, who entered service September 14, 1922, is employed as Foreman at Jersey City, N. J. and is paid \$212.60 per month.

On March 18, 1942, position of Assistant General Foreman, Weehawken-Croxtan, rate \$245.00 per month was advertised under advertisement Bulletin No. 20. Mr. A. W. Barber bid on this position which was assigned to J. Welsh employed as Foreman at Weehawken Docks, who entered service on January 28, 1940.

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 No. 1 (Scope) reads as follows:

"These rules shall govern the hours of service and working conditions of the following employees 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 inspectors, 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 assorters, messengers, office boys and others performing similar work."

"Group 2. Station baggagemen, gatemen, ushers, matrons, station, freight house, transfers, 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

2. J. Welsh was selected because of his experience. The claimant did not have the required qualifications.
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."
4. Bulletin covering the new position issued March 18, 1942 included the provisions of the Memorandum of Understanding dated September 29, 1941, and there was no protest concerning this provision of the bulletin by the employees, and in the progress of this claim by the Division Chairman and General Chairman they did not at any time question the right of the railroad to bulletin under the terms of the memorandum.

OPINION OF BOARD: This case concerns the position of Assistant General Foreman, Weehawken-Croxton, and everything we have said in Docket No. CL-2397, Award No. 2347, with respect to the position of Assistant General Foreman in that case being covered by the current agreements, applies equally in this case.

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 employee involved in this dispute are respectively carrier and employee 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 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.