

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

- (1) When it failed and refused to bulletin, award and assign the position of Shore Foreman in the Office of Superintendent Lighterage, New York, New York, and
- (2) That Carrier shall now bulletin, award and assign the position of Shore Foreman as provided in the Clerks' Agreement, and
- (3) That the successful applicant and all other employes affected be reimbursed for any and all wage loss sustained retroactive to February 4, 1946.

EMPLOYES' STATEMENT OF FACTS: Prior to February 4, 1946 there was a vacancy on one of the positions of Shore Foreman in the Office of Superintendent of Lighterage, Produce Exchange, New York City. After the vacancy had extended beyond thirty (30) days, the Local Committee of the Brotherhood requested the position be bulletined, awarded and assigned in accordance with the Clerks' Agreement. This the Carrier refused to do contending that the position was not covered by the Clerks' Agreement.

Matter was handled in usual line of progression up to and including the highest officer designated by the Carrier for handling these matters.

At meeting with Vice President, Mr. Johnson on June 6th, 1946, that gentleman offered to dispose of the matter provided the Committee would agree that the position was not subject to certain rules of the Agreement, contending that the title of Shore Foreman was a misnomer and that the position more closely resembled a position of runner between the Superintendent and other officials and dock operations.

The Committee would not agree to this proposed disposition and pointed out there were no exceptions noted in the Agreement.

POSITION OF EMPLOYES: There is in effect between the parties an Agreement bearing effective date of July 1, 1945 which contains the following rules:

claim. John Bryant Lofts is the same employe who addressed letter to Chief Clerk Sullivan on February 4, 1946 and requested that Carrier bulletin temporary vacancy of Shore Foreman, due to absence of Shore Foreman Meyer. Lofts letter is quoted hereinbefore on page 2. His letter February 4, 1946, is basis of this claim now submitted to Third Division.

Exhibits not reproduced.

OPINION OF BOARD: The Organization here contends that the Shore Foreman in the office of Superintendent of Lighterage, New York City, are covered by the Agreement between the parties, and that the position of Shore Foreman should be bulletined, awarded and assigned in accordance with the Agreement. The Organization also asks that the Board make its findings and award retroactive to February 4, 1946, when the Carrier failed to bulletin a position of Shore Foreman.

Each party submitted to the Board a detailed description of the duties of Shore Foremen. The Organization's description emphasized the strictly clerical duties of the position; the Carrier emphasized the supervisory functions. We believe that the clerical duties are dominant and that, under the "catch-all" language of Rule 1 ("* * * and others performing similar work") the positions are covered by the agreement.

Even if the positions were found to be dominantly supervisory in nature, we would reach the same conclusion. Rule 1 includes "foremen" in general, in those areas covered. The Office of the Superintendent of Lighterage is specifically covered.

The fact that the Organization had never claimed coverage before 1946 must be dismissed. This Board many times has held that failure to prosecute a rightful claim in the past does not estop present action.

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 Carrier violated the agreement as indicated in the Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8rd day of November, 1947.