

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

H. Nathan Swaim, 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 violated the Clerks' Agreement:

(1) When on May 25, 1946, it arbitrarily released thirty-one (31) regularly assigned employees at Croxton Transfer, Croxton, N. J. prior to the completion of their tour of duty for the day, and

(2) That the Carrier shall now be required to compensate each of the thirty-one (31) employees involved for four (4) hours at their regular rates of pay.

**EMPLOYEES' STATEMENT OF FACTS:** In accordance with the provisions of the Clerks' Agreement, 56 of the employees working at Croxton Transfer, Croxton, N. J., on May 25, 1946, were assigned employees covered by the provisions of the Guarantee Rule, and of this number the 31 employees, named on list attached and identified as Employees' Exhibit "A", were on that date released from further service on completion of three and one-half hours work.

On May 25, 1946, due to the strike of Engineers and Trainmen, less cars were handled at Croxton Transfer than worked normally and the Carrier assuming that conditions beyond control of the Carrier included strikes, sent the 31 assigned employees home after completion of three and one-half hours work and each was allowed four hours pay.

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

Rule 23 (Platform Roster "B" Employees) reads as follows:

(a) "Regularly assigned Roster "B" platform positions will be established quarterly as follows:

1. 1st quarter—January, February and March  
2nd quarter—April, May and June  
3rd quarter—July, August and September  
4th quarter—October, November and December

2. "At Piers 20 and 21 (nights) on Sundays to Thursdays, inclusive (except nights before holidays), and at Weehawken Docks (nights) on Mondays to Fridays, inclusive (except nights before

"'conditions beyond the control of the Carrier', meant exactly as we had contended throughout the negotiations, namely, so-called Acts of God such as floods, wrecks, washouts, **strikes**, and other circumstances of like character. At no time was any other character or form of condition considered."

This Memorandum was Employes own interpretation of the intent of Rule 30 of Agreement effective September 1, 1936, which rule was incorporated verbatim as Rule 28 of Agreement effective December 1, 1943, amended July 1, 1945.

**OPINION OF BOARD:** The sole question presented by this case is whether strikes are included in paragraph (c) of the exceptions to the Guaranty Rule which paragraph permits the Carrier to reduce the number of days work below the number specifically by Guaranty Rule where such reduction is caused "By conditions beyond the control of the Carrier".

Rule 23 (a) 3 guaranteed the claimant "the number of days per week as provided in Rule 28 \* \* \*."

Rule 28, the Guaranty Rule, guaranteed these men six days per week, except that the Carrier might reduce the number, "(c) By conditions beyond the control of the Carrier".

The Organization insists that the strike of the Engineers and Trainmen was not a "condition beyond the control of the Carrier" within the meaning of Rule 28 (c) and that therefore the Carrier could not reduce the guaranteed work period of these employes except "by mutual agreement between the management and Division Chairman pursuant to Rule 23 (a) 3".

We must interpret this provision in Rule 23 (a) 3, however, as applying only in cases not covered by Rule 28 because Rule 23 (a) 3 expressly states that it is providing the method for establishing the number of "eight (8) hour positions to be worked \* \* \* for the number of days per week **as provided in Rule 28**" (our emphasis), and then follows a provision that the number of positions so established may be reduced, if necessity should arise, by mutual agreement between the Carrier and the Brotherhood. Here the parties must be providing for a necessity not covered by the exceptions which constitute a part of Rule 28.

Rule 28 in the Current Agreement is identical with Rule 30 of the 1936 agreement between these same parties. In connection with the 1936 agreement the responsible officers of the Brotherhood executed a memorandum interpreting "conditions beyond the control of the Carrier as so-called Acts of God such as floods, wrecks, washouts, strikes and other circumstances of like character".

In the negotiations preceding the execution of the present Agreement the Carrier made a counter proposal regarding Rule 28 (c) suggesting that it be made to read "(c) By conditions beyond the control of the carrier, i. e., Acts of God, weather conditions, wrecks, or labor disputes". The record does not disclose the proposal of the Brotherhood to which this was a counter proposal.

Neither the proposal nor the counter proposal was accepted and the Rule was included in this Agreement in the same words as were used in the 1936 agreement.

Ordinarily a rule from a former agreement included in a new agreement between two parties is considered as having the same meaning in the new agreement as was attributed to it by the parties in the former agreement. It carries along with it such interpretations as the parties have given it.

The Brotherhood seeks to avoid this ordinary rule of construction in this case on two grounds.

First, it is contended that the Carrier by attempting and failing to change the rule to include within paragraph (c) an explanation of its mean-

ing similar to the memorandum interpretation made in connection with the 1936 agreement has shown that the parties did not intend the rule in the present agreement to carry the same meaning. If the Carrier had attempted to include in the present rule only a provision that the paragraph be considered as including strikes or labor troubles there would be force to the contention of the Brotherhood. Here, however, the Carrier suggested including in the explanation "Acts of God, weather conditions, wrecks, or labor disputes." It would seem just as logical for the Brotherhood to now contend that the present provision cannot be considered as including Acts of God, weather conditions, or wrecks.

The Brotherhood also contends that Rule 55 of the present Agreement cancels the interpretation placed on Rule 28 (c) (Rule 30 (c) of the 1936 Agreement). Rule 55 of the present Agreement provides:

"This Agreement shall supersede existing agreements \* \* \*."

We do not believe this general statement in the present Agreement should be permitted to nullify an interpretation by the parties of a rule of the former that is carried forward verbatim into the present Agreement.

If there was an agreement by the parties that the rule should be changed that fact could have been shown. If there was agreement that the interpretation should be amended to exclude strikes, that fact could have been shown. It is not sufficiently shown by a counter-proposal without the proposal to which it is made, and a counter-proposal which includes reference to all of the elements of the interpretation. Nor is it sufficiently shown by a general statement that this Agreement supersedes all existing agreements.

**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 Employees involved in this dispute are respectively carrier and employees 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 did not violate the Agreement.

#### AWARD

Claim (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.