

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood (GL-5733) that:

1. Carrier violated the rules of the Clerks' Agreement when they permitted employes from 28th Street Station (New York City) to displace regular assigned men at Pier No. 68 (New York City) for overtime on the following dates:

Date	Pier No. 68 Men Displaced	Overtime Hrs. Deprived of
September 26, 1962	8	4½ hours
September 28, 1962	6	2½ hours
October 3, 1962	9	3 hours
October 24, 1962	11	3½ hours
November 6, 1962	11	3½ hours
November 23, 1962	10	3 hours

2. Carrier now be required to reimburse the following employes for wage loss they sustained as a result of being deprived overtime work on their assigned position on the following dates and to the extent shown below:

September 26, 1962 — Employees J. Schavers, B. Bailey, V. Gladsky, T. Collins, R. Johnson, W. Woody, A. Sturdivant and L. Gardner were each deprived of 4½ hours overtime.

September 28, 1962 — Employees J. Schavers, V. Gladsky, T. Collins, R. Johnson, W. Woody and L. Gardner were each deprived of 2½ hours overtime.

October 3, 1962 — Employees F. Williams, J. Schavers, B. Bailey, V. Gladsky, R. Johnson, T. Adams, M. Ashe, E. Cooper and L. Gardner were each deprived of 3 hours overtime.

October 24, 1962 — Employees J. Panky, S. Chew, D. Lupo, F. Voci, F. Williams, J. Schavers, B. Bailey, V. Gladsky, H. Smith, L. Gardner and W. Woody were each deprived of 3½ hours overtime.

November 6, 1962 — Employees J. Panky, S. Chew, D. Lupo, F. Voci, F. Williams, J. Schavers, B. Bailey, V. Gladsky, H. Smith, R. Johnson and L. Gardner were each deprived of 3½ hours overtime.

November 23, 1962 — Employees S. Chew, D. Lupo, F. Voci, B. Bailey, V. Gladsky, R. Johnson, H. Smith, W. Woody, R. Callahan and L. Gardner were each deprived of 3 hours overtime.

All of the above employees are regularly assigned Stowers located at Pier 68, New York City, and were displaced by checkers, foremen, receipt and delivery clerks and stowers from other work locations within the 28th Street (New York) Station.

3. Carrier reimburse employees involved for all wage loss sustained on all subsequent dates until the violation herein complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to merger of the Erie Railroad Company and Delaware, Lackawanna and Western Railroad Company, the Erie Railroad had a facility known as 28th Street Station (New York) which consisted of freight office at 28th Street, freight platforms at 28th and 29th Streets and pier forces at Pier 67. Contrary to the provisions of Rule 7 (a) of the Clerks' Agreement, vacancy bulletins covering Roster B positions did not specify the exact work location, but simply showed "28th Street Station." After the positions were assigned, the Local Agent would issue orders to have a given number of stowers sent to Pier 67 and a certain number to 28th Street. The General Foreman would then pick the men who would work at these locations. Inasmuch as all positions were considered "28th Street Station", any overtime necessary would be given to the senior employee. In other words, if overtime was necessary at Pier 67, an employee working as an R&D Clerk or Checker at 28th Street who was senior to a Stower at Pier 67, would get the overtime as a Stower at the pier and the employee who had worked as a Stower at Pier 67 all day would go home.

The merger of the former Erie Railroad and former Delaware, Lackawanna and Western Railroad was approved by the Interstate Commerce Commission effective October 15, 1960. Under date of October 3, 1961, Memorandum of Agreement was executed by the parties merging freight office and pier forces of the former Delaware, Lackawanna and Western Railroad Company at Pier 68, N.R., New York, with freight office, platform and pier forces of the former Erie Railroad Company at 28th Street Station,

including Carrier's conference notes, is attached hereto as Carrier's Exhibit D through H.

(Exhibits not reproduced.)

OPINION OF BOARD: It is undisputed that prior to merger between the Erie and Delaware and Lackawanna Railroad the employees covered by the Erie agreement were assigned to overtime work by seniority, regardless of whether the work was to be performed at 28th Street, 29th Street, or Pier 67. In effect prior to merger all the work stations were considered part of the 28th Street location and the work force was managed as an integrated group, without regard to their specific work station.

After the merger, the parties entered into a Memorandum of Agreement which merged the former Erie locations with the former DL&W locations into "the Erie-Lackawanna Railroad Company's 28th Street Station, New York, New York." The agreement further provided for "the actual consolidation, merging and integration of the work in the above offices."

After the merger the Carrier continued to assign overtime as it had in the past, but it included the former DL&W Pier 68 in this practice.

The practice continued in effect from the merger date of October, 1961, to July, 1962, without any protest by the Organization.

In July of 1962 the practice was complained of and in October, 1962, a formal claim was made in which the Organization contended that Rule 20-1 (d) of the agreement had been violated, in that assignment of overtime was not made to those who held the positions during normal working hours.

Subsequent to the bringing of this case the parties negotiated a change in the practice whereby it now reflects the language of 20-1 (d) rather than the prior Erie practice.

The issue before the Board, therefore, is whether after the Organization protested the continuation of the Erie practice the Carrier was obligated to make a change based upon that protest.

In our view, it was not under any such obligation. Prior to the merger the practice represented the parties' understanding of the manner in which the agreement was to be interpreted and as such merged into the agreement itself. The effect of the merger, as we see it, was to add Pier 68 to the previously established 28th Street location. By so doing the terms, conditions and practices of that location were to continue, unless otherwise specified in the Memorandum of Agreement. No such exclusion or modification was set forth. To, therefore, require a subsequent change based upon a protest would negate the entire meaning and utility of past practice. More specifically, once a practice is established and adopted by both parties as the proper interpretation of a Rule neither party unilaterally should be allowed to abandon that practice anymore than he should be allowed to abandon a written rule.

The proper method for change is that which the parties subsequently followed, namely, negotiation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.