

Award No. 14367
Docket No. CL-13047

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD
(Eastern District, Boston and Albany Division)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5046) that:

1. Carrier violated the rules of the current Clerks' Agreement when on February 6, 1961 Carrier sent part of the regular force of Freight Handlers assigned at Kneeland Street, Boston, Massachusetts, home upon their reporting for duty and compensated them for 2 hours' pay for reporting on that date.

2. Employees —

P. Knightly	A. Menard
J. McIntyre	L. Carbonneau
R. Kelly	J. Bradley
P. Madden	L. Chapman
J. Howlett	J. DeMaio
F. Delorey	J. Leahy
L. Zollencoffer	W. Foley
J. Riley	T. O'Connor
O. Melvin	J. Tunstall
J. Ryan	A. Potter
F. Levesque	J. Scannell
W. Stone	D. Sullivan
R. Godlock	G. Thomas
H. Johnson	S. Borys
F. Tupper	W. Fors

shall each be additionally compensated 6 hours' pay at the pro rata rate of their respective positions for February 6, 1961, and

3. The Agreement was further violated when Carrier laid off and blanked the positions of employees —

A. Menard	J. Tunstall
G. Mears	E. Brennan
L. Carbonneau	C. Ferman
I. Dubuque	J. Gallagher
J. Bradley	A. Potter
L. Chapman	J. Scannell
S. Marchocki	D. Sullivan
J. DeMaio	G. Thomas
J. Leahy	S. Borys
W. Foley	W. Fors
T. O'Connor	

on February 7, 1961, without proper notice.

4. Employees —

A. Menard	J. Tunstall
G. Mears	E. Brennan
L. Carbonneau	C. Ferman
I. Dubuque	J. Gallagher
J. Bradley	A. Potter
L. Chapman	J. Scannell
S. Marchocki	D. Sullivan
J. DeMaio	G. Thomas
J. Leahy	S. Borys
W. Foley	W. Fors
T. O'Connor	

shall each be compensated 8 hours' pay, pro rata rate, of their respective positions for February 7, 1961.

5. The Agreement was further violated when Carrier laid off and blanked positions of employees —

W. Foley	A. Potter
T. O'Connor	J. Scannell
J. Tunstall	D. Sullivan
E. Brennan	G. Thomas
C. Ferman	S. Borys
J. Gallagher	W. Fors

on February 8 and 9, 1961, without proper notice.

6. Employees —

W. Foley	A. Potter
T. O'Connor	J. Scannell
J. Tunstall	D. Sullivan
E. Brennan	G. Thomas
C. Ferman	S. Borys
J. Gallagher	W. Fors

and that the trucks would be able to perform some pick up and delivery service the following day.

The Carrier thereupon notified fifteen of the employes listed in Item 2 of the Employes' Statement of Claim to report to work on February 7, 1961. Those that Carrier could not reach by telephone were forwarded such notice in the form of a telegram.

There were a number of employes that did not report to work on February 6 due to transportation difficulties. These employes were similarly notified on February 6 to report to work on February 7.

The freight cars in trains that had been delayed at points west of Boston because of the snowstorm were arriving at Boston on February 7 and the trucks were progressively becoming able to reach the doors of shippers and receivers.

The Carrier, therefore, telephoned or sent telegrams to the remainder of the freight handling force on February 7, notifying them to report for work on February 8.

The Carrier's operations had not reached a normal condition on February 8 and 9; however, the only reason any freight handlers did not work was because they failed to report as directed.

The claim was thereafter presented to Carrier under date of February 19, 1961 and progressed to the Carrier's highest appeals officer in the manner provided for in the Agreement between the parties. The exchange of correspondence in this case has been reproduced and attached as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: A snowstorm occurred in Boston on Friday, February 4, 1961. The evening report from Carrier's Kneeland Street Freight House indicated 4 cars of Boston and area freight placed, 3 cars of transfer freight placed, and 2 Boston and area freight cars not placed.

The Saturday in question was a rest day of Claimants, as was Sunday.

Carrier asserts the only cars left over from Friday, February 3 that could be worked at Kneeland Street on Monday, February 6, were the 4 containing Boston and area freight. It also describes other conditions existing Monday in support of its contention that there would not be any additional freight forthcoming.

The facts with respect to the conditions caused by the snowstorm are not disputed.

When these Claimants reported for work as scheduled Monday, beginning at 6:00 A. M., through 8:00 A. M., they were assigned to clearing snow from the platform and handling available freight.

When the freight handlers appeared, Carrier notified them that the "snowstorm had caused a partial suspension of Carrier's operations, and, as there was no freight available to be handled, they would not be used, and would be later notified when to return to work. The men who did report but were not used were allowed two hours' pay under Rule 19.

Carrier states that during the afternoon of February 6 it was determined that the yard engine would be able to do "some switching on the house" that evening, and that the trucks would be able to perform some pickup and delivery service the following day. Fifteen of these Claimants were called to work the following day.

Carrier's defense is predicated on Rule 19:

"Regularly assigned employees required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the Carrier, will be allowed a minimum of two (2) hours' pay."

The agreement states "conditions beyond control of the Carrier" has reference to:

". . . Acts of Providence such as floods, fires, washouts. . . ."

The following U. S. Weather Bureau summary was in Carrier's possession Saturday afternoon at 2:30 P. M.:

"The intense storm which marched up the Atlantic coastline yesterday (Friday) was centered near Nantucket, Rhode Island, at about 25 miles per hour. Heavy snow warnings are up for the New England area with gale warnings displaced along the coast. The storm had dumped unusually large amounts of snow over much of the Northeast, with many places reporting from a foot to a foot and a half of new snow. States of emergency have been declared in the cities of Utica and Syracuse while blizzard conditions have paralyzed the City of New York. . . ."

Such a forecast from the Weather Bureau in the Boston area to a New England Carrier approximately 36 hours before Claimants' starting time Monday morning cannot be now accepted as proof of "conditions beyond the control of the Carrier" within the meaning and intent of Rule 19. So far as the effects of the storm on Carrier's operations are concerned, it is stated by the Organization without denial that Carrier made no effort to clean the snow from its operation here involved until Monday morning, despite the fact that Sunday was a clear, sunny day.

In the light of this record, Carrier's action of Monday, February 6, 1961 cannot now be held justified under Rule 19. Admittedly, a snowstorm does create problems. However, when the after effects of a snowstorm prevent men from working two days later, and it is only then that Carrier acts to remove the snow, we cannot agree that the situation Monday was beyond the control of the Carrier.

So far as the claims with respect to Monday, February 6, 1961, are concerned, we will sustain the Organization's claim of six hours' pay at pro rata rate, for those freight handlers who reported that date.

With respect to the claims for February 7, 8 and 9, we believe Carrier's notices beginning the afternoon of February 6 and thereafter were proper notices under Rule 13(b). These claims will be denied.

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 violated.

AWARD

Claims disposed of in accordance with Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.