

Award No. 14510
Docket No. CL-14082

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, 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-5375) that:

1. Carrier violated the rules of the Clerks' Agreement as well as the National Vacation Agreement at the Niagara Frontier Food Terminal, Buffalo, N. Y. on Friday and Saturday, March 23 and 24, 1962, when F. Lewandowski, an Erie-Lackawanna extra employe, was permitted to work a Nickel Plate assignment thereby depriving available Nickel Plate employes the opportunity to work, and

2. Carrier shall now compensate Martin A. Faith eight (8) hours' pay at time and one-half rate for March 24, 1962, date on which he was available and willing to work but was deprived of the opportunity to do so when Carrier utilized the services of an Erie-Lackawanna employe holding no seniority rights on the Nickel Plate seniority roster to work on a Nickel Plate assignment, and

3. Carrier shall now compensate R. C. Leavers eight (8) hours' pay at time and one-half rate for March 23, 1962, date on which he was available and willing to work but was deprived of the opportunity to do so when Carrier utilized the services of an Erie-Lackawanna employe holding no seniority rights on the Nickel Plate seniority roster to work on a Nickel Plate assignment. (Claims #1369 and #1370)

EMPLOYEES' STATEMENT OF FACTS: At Buffalo, N. Y., more than thirty years ago, the former Erie Railroad and Nickel Plate Road entered into an operating agreement establishing within the confines of the City of Buffalo on Erie Railroad property the Niagara Frontier Food Terminal designed to handle cars of perishable and merchandise freight consigned to consignees whose business establishments were located in or adjacent to the Terminal. Under the arrangement, the Erie Railroad as the operating company placed cars on special tracks for unloading by the consignee to whom the cars were consigned. Contents of the cars were sold to either public or private buyers. The Railroad operating the terminal facilities furnished clerical and physical help to handle the cars, collect charges, make diversions or whatever clerical work was necessary and also furnished employes called loaders whose duties consisted of breaking seals and making delivery of partial loads, taking a

Railroad Company. A Memorandum of Agreement entered into with the Brotherhood of Railway and Steamship Clerks' organization of each railroad, dated September 12, 1946, copy attached as Carrier's Exhibit "A", provides that clerical employees of the respective roads shall come within the scope and operation of the rules agreement with the Erie-Lackawanna Railroad, "except that the provisions of Rule 23 (Roster 'B' forces) and Rule 36 (probationary rates) of the Erie Agreement will not be applied to employees retaining seniority under the Nickel Plate Agreement, and such employees for the purpose of applying the Chicago Vacation Agreement, dated December 17, 1941, shall be considered as coming under Rule 32 (Vacations) of the Nickel Plate Agreement."

Arthur Faith, who holds seniority as a Nickel Plate employee and who was regularly assigned to a relief position as follows:

Friday	—NKP Loader at Food Terminal
Saturday	—NKP Loader at Food Terminal
Sunday	—Clerk at NKP Freight Office
Monday	—NKP Clerk at Food Terminal
Tuesday	—NKP Clerk at Food Terminal
Wednesday	—Rest Day
Thursday	—Rest Day

was scheduled for vacation from August 17 to August 28 and December 14 to 18, 1962, a total of three (3) weeks. For personal reasons he requested and was granted the right to take one (1) week of his vacation beginning March 23, 1962. Account there being no extra Roster "B" Nickel Plate employees, an extra Roster "B" Erie-Lackawanna employee was used to fill the position of vacationing employee Arthur Faith on Friday, March 23, 1962, and Saturday, March 24, 1962.

Under date of March 27, 1962, claim was instituted by Martin A. Faith, hereinafter referred to as claimant, for one day at time and one half account not used on his rest day to work position of Arthur Faith, and F. Lewandowski an extra Roster "B" employee holding Erie-Lackawanna seniority rights used instead.

Under date of March 26, 1962, claim was instituted by R. G. Leavers, hereinafter referred to as claimant, for one day at time and one half account not used on his rest day to work position of Arthur Faith, and F. Lewandowski used instead.

These claims were denied and thereafter handled on appeal by Petitioner in the usual and prescribed manner to Carrier's highest officer designated to handle such matters (Carrier's Exhibits "B" and "C") and in accordance with agreed upon procedure, claims were listed for discussion in conference on November 13, 1962 and denied, with Carrier's denial decision being confirmed by letter dated December 7, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: Arthur Faith, who holds seniority as a Nickel Plate employee at the Niagara Frontier Food Terminal, Buffalo, N. Y. took one week vacation commencing March 23, 1962. Carrier assigned an extra Roster "B" Erie-Lackawanna employee to fill his position on Friday, March 23, and Saturday, March 24, 1962. Claimants, employees of the Nickel Plate Road, filed

the instant grievance contending they should have been called to fill the position of the vacationing employee.

The Organization contends that the 1946 Memorandum of Agreement between the parties equally divides positions between the two Railroads, and provides that Nickel Plate positions shall be filled by Nickel Plate employees. It asserts that Nickel Plate Rules and seniority are preserved in the area of vacations, and that the Nickel Plate Road has agreed to accept full responsibility for any expenses arising from the granting of vacations. Accordingly, it concludes that the Carrier violated the parties' Agreement when it assigned an employee not covered by the Nickel Plate agreement to perform vacation relief work on a Nickel Plate position.

Carrier asserts that this Board lacks jurisdiction to hear this dispute which is between the Erie-Lackawanna and the employees of the Nickel Plate, and thus not a dispute between a carrier and its employees as required by the Railway Labor Act. Alternatively, it argues that no violation of the Food Terminal agreement has been shown; that Arthur Faith's absence was due to vacation and under Article 12(b) of the Vacation Agreement was not a vacancy. Inasmuch as all employees came under the Agreement the Erie was not required to assign only Nickel Plate employees to the position in dispute.

We find we have jurisdiction in this case. The parties 1946 Memorandum of Agreement places all employees working in the Niagara Frontier Food Terminal under the Rules Agreement between this Organization and the Erie-Lackawanna Railroad Company. Protection of the coverage of that Agreement, with the three cited exceptions much also mean that those covered retain the right to protest alleged violations of that Agreement to the Erie-Lackawanna authorities. The evidence is quite clear that the Erie-Lackawanna Agreement, with the cited exceptions thereto was extended to Nickel Plate employees, and that they have been properly exercising their right of appeal thereunder, with acquiescence of the Erie-Lackawanna supervisory authorities.

Turning to the merits, it is clear that the Food Terminal Agreement intended to equally divide positions between the two railroads, retaining the identity of the employees with their railroad and that open positions would be filled with employees from the railroad concerned. Similarly seniority rights on each railroad were protected.

The memorandum specifically excluded the Vacation Rule in the Erie Agreement from application to Nickel Plate employees. Under Rule 32 of the Nickel Plate Agreement the National Vacation Agreement is incorporated by reference.

In this case there was no regular relief employee available to fill the vacationing employee's position, and under Rule 12 (b) of the National Vacation Agreement " * * * effort will be made to observe the principle of seniority."

As noted by Referee Parker, Award 5917,

" * * * when a regular relief employee is not utilized to fill the position of an employee absent on vacation, if the position is to be filled, the Carrier is required, even under the terms of the Vacation Agreement, to observe the principle of seniority."

The Carrier acted improperly in assigning an employee not covered by the

Nickel Plate agreement or holding seniority thereunder, to perform vacation relief work on a Nickel Plate position.

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 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1966.