Award Number 17437
Docket Number CL-17477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE 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-6369) that:

1. The Carrier violated the terms of the Clerks' Agreement when they failed to order the middle trick forces to cover work performed on Saturday, February 27th, 1965 by continuing the gangs ordered to work, from 8:00 A.M. February 27, through to February 28th, at 1:00 A.M. when they finished.

2. The Carrier shall now be required to compensate Checker Henry Ford, Melvin Seams and all others who have suffered monetary loss by virtue of this violation shall be fully compensated, such information with respect to employes adversely affected and the extent thereof to be determined by a joint check of the company's records. (Claim 1688).

EMPLOYES' STATEMENT OF FACTS: The positions involving assigned employes affected by this claim at the Hoboken, N.J. Piers as well as additional or extra forces are governed by Rule 23 of the Clerks' Agreement which reads:

"Rule 23—Freight Platform Roster "B" Employes

(a) Regularly assigned Roster "B" freight 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 Weehawken Docks (nights) on Mondays to Fridays, inclusive (except nights before holidays), divide the number of manhours paid for during the same quarter of the preceding year by 1100 to arrive at the number of regularly established eight (8) hour positions to be worked on such nights during the current quarter. No additional operations of this character will be established, except through negotiations between the Management and the General Chairman or their representatives.

7 employes worked from 4:30 P.M. to 10:00 P.M., 5 1/2 hours additional
26 employes worked from 4:30 P.M. to 10:30 P.M., 6 hours additional

Under date of April 12, 1965, the Local Chairman filed claim with the Assistant Superintendent of Lighterage, on behalf of claimant Henry Ford, Melvin Seams, and all others who allegedly suffered monetary loss, on the contention that "additional work beyond the 8-hour tour of duty of the day forces belonged to employees assigned to the 4:30 P.M. shift and they should have been called for this work rather than keep the day force beyond their normal working hours, which deprived them of an additional day's wages at time and one-half". Claim was denied on June 10, 1965, and thereafter timely handled on appeal up to and including Carrier's highest officer designated to handle such matter, where it was discussed in conference and denied in letter dated January 9, 1967 (Carrier's Exh. A). Subsequent exchanges of correspondence are evidenced by Carrier's Exhibits B and C.

(Exhibits not reproduced)

OPINION OF BOARD: The disputed work occurred on an unassigned day (Saturday) and took place during what would have been the second shift. Many extra employes had been used during the first shift; all first shift assigned employes were also given the opportunity to work. The work continued into the second (or middle) shift time, but Carrier permitted the extra and first shift employes to continue to work until the job was completed.

Rule 20-3, Overtime, reads in part:

"(f) Work on Unassigned Days

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; **in all other cases, by the regular employes.**" (Emphasis ours.)

The rule is clear. Carrier may use available extra or unassigned employes. Thus such work, if any, as was done after 4:30 P.M. by an extra or unassigned employes who had not accrued 40 hours was permissible under the Agreement. Any such employe who had accrued 40 hours by such time could not properly be used. All other remaining work belonged to the regular middle trick forces. In using first trick forces instead Carrier violated the Agreement.

Carrier asserts an emergency existed and that such should excuse the violation. We are unable to so interpret the record. Carrier further claims that the claim should be denied because it is vague—in particular that Petitioner seems to claim that any available extra employes not having previously worked 40 hours should participate in the claim. This defense is not valid. The proper Claimants are easily identifiable. The work belonged, in order of seniority, to such middle trick personnel as were available for service. They are entitled to be paid for the loss of earnings sustained in the violation of the Agreement.

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 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 Agreement was violated.

AWARD

Claim sustained. Carrier and Employes shall make a joint check to ascertain proper Claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.

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