



Award Number 17622

Docket Number CL-18083

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6516) that:

1. Carrier violates the rules of the Clerks' Agreement when it forces employes classified as Open Dock laborers at Hoboken Piers who work in conjunction with the operation of diesel cranes in the movement of export freight, boxed as "landers" and "hookers' up" to move out of their work classification and perform work in the Covered Dock piers as stowers, breakers, fork lift operators, etc. and
2. Carrier shall now remedy this violation of the rules agreement and discontinue the practice of forcing these employes to perform work in other than the work classification covered by the position for which they submitted bid and which was awarded to them. (Claim 1862)

EMPLOYEES STATEMENT OF FACTS: Prior to merger, the former Erie Railroad operated a freight yard at Weehawken, N.J. as a receiving yard and also a holding yard for lighterage and export freight. This yard was located on the west bank of the Hudson River just north of Hoboken, N. J. and directly across from 33rd Street, New York City. The yard tracks, including farm tracks had a capacity of 857 cars; pier tracks 281 cars, fifteen (15) crane tracks, 183 cars or a total capacity of 1,322 cars. The yard contained 6 diesel cranes and 2 steam cranes both having a capacity of 25 tons. This yard was commonly referred to as the "Open Dock". Prior to merger, all Erie lighterage was handled at Weehawken except for a small portion of covered lighterage which was handled at Jersey City Pier 8.

The merging of the office, platform and pier forces of the former Delaware, Lackawanna & Western Railroad at Hoboken Lighterage Terminal, Hoboken, N.J. with the Lighterage office, platform and pier forces of the former Erie Railroad at Weehawken and Dock 8, Jersey City, N.J. as the Erie-Lackawanna's New York Harbor Lighterage Terminals at Hoboken and Jersey City, N.J. was accomplished by Memorandum of Agreement dated October 3, 1961, copy attached as Employes' Exhibit "A".

In compliance with Section 2 of this Memorandum of Agreement, Carrier posted a bulletin showing the proposed force at Weehawken Docks, Dock 8, Jersey City and Hoboken Terminal Piers and as evidenced by Employes'

On October 3, 1961, the parties again met and negotiated Memorandum of Agreement No. LV, copy attached as Carrier's Exhibit A, merging and consolidating the office, platform and pier forces of the former DL&W at Hoboken Lighterage Terminal, Hoboken, N. J. with the office, platform and pier forces of the former Erie at Weehawken, N. J. and Dock 8, Jersey City, N. J. as Carrier's New York Harbor Lighterage Terminal.

Under date of November 21, 1961, the agreed upon regular positions in the consolidated facility were advertised to a consolidated appendix of employees who had formerly been regularly assigned at Hoboken, Weehawken and Dock 8. Other than regularly assigned employees, or "shape" employees, worked at the various locations comprising the consolidated facility consistent with their reporting for work and seniority. Copy of bulletins advertising Roster B positions at the consolidated facility and appendix of employees are attached as Carrier's Exhibit B.

On December 13, 1961, all positions at the New York Lighterage Terminal were awarded effective December 18, 1961.

Regular operation and forces at Weehawken and Dock 8 were subsequently discontinued and Hoboken and Pier 20 are now the only locations where Carrier maintains a regular platform and pier force to handle its lighterage operation. The New York Harbor Lighterage Terminal at Hoboken consists of the open docks (farm area), where freight is handled from and to flat cars, gondolas, barges and scows, and covered docks, where freight is handled from and to box cars. They consist of an open dock (farm area) and covered dock gang is shown below:

Open Dock Gang		Covered Dock Gang	
Title of Position	Current Rate	Title of Position	Current Rate
Crane Operator	\$3.3917	Fork Lift Operator	\$3.2145
Checker	3,2145	Checker	3.2145
4-Laborers (landers hookers-up, etc.)	3.0918	2-Stowers	3.1190

Under date of October 27, 1966, Petitioner submitted the grievance now before this Board for adjudication alleging that Carrier violated the rules agreement when it utilized open dock employees at the covered docks and vice versa in other than their advertised work classification during regular work hours when necessary and when there was not 8 hours of work to perform at their advertised location. The exchange of correspondence between the parties regarding the grievance is attached hereto as Carrier's Exhibits C through S.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Carrier contends that Petitioner has not stated a claim upon which this Board can entertain jurisdiction. Carrier characterizes the Petitioner's claim as hypothetical, with no showing of damages, which requests an injunction or cease and desist order, which this Board has no jurisdiction to grant.

I find that the Petitioners claim, if it were supported by the facts and the contract, would state a real and substantial breach of the contract to which the Petitioner would be entitled to a remedy. The nature of the relief requested by the Petitioner is not the test for jurisdiction. The Petitioner would be entitled to any relief to which its Statement of Claim entitled it. Claimant may ask for too much or too little, but if it states a claim which

entitles it to any relief then the Board may entertain jurisdiction. The Petitioner has stated a claim to which it may be entitled to some relief, if supported by the facts and contract, and therefore the claim is properly before the Board.

Petitioner claims that an employee, having been awarded a position established pursuant to Sec. 23 and Bulletined pursuant to Sec. 7 may not be temporarily assigned work other than that described in the "title" provided in the standard form as required on page 59 of the Agreement. Specifically Petitioner objects to the practice of assigning checkers, crane operators or laborers on the open dock to stowers positions on the covered dock.

The Petitioner asserts this practice is in violation of the agreement in two regards. First, the stower on the covered dock have a contractual right not to be displaced based on Sec 23 (a) 4 and the checkers on the open dock have a right not to be transferred based on Sec 7 (a) NOTE 1. The Petitioners claim must fail on both counts.

Taking Sec 23 (a) 4 first, this section provides that Carrier may use extra forces. It is permissive, not mandatory and not restrictive of Carrier's discretion in directing the work force.

Carrier may temporarily transfer the open dock employees work assignments for two reasons. First, the carrier has the inherent power to do anything not restricted by law or contract: See Award 12358 (Dorsey), and there is nothing in the Agreement restricting this right to the Carrier. Second, Rule 34 makes it abundantly clear that the parties consciously agreed that Carrier should have the right to make transfers between different work duties on a temporary basis.

The purpose of providing the job "title" or "description" is, "* * * * *" for the purpose of identifying them (the jobs) in order that employees bidding could act intelligently, and was not for the purpose of fencing in the work of each position". Award 7166 (Carter) This is the holding of the majority and best reasoned cases.

It is agreed that such assignments may be only temporary. The degree of permanence of these job assignments was not in issue, both parties agreeing that they were only temporary.

The Petitioner urges past inconsistencies on Carriers part on this same point. This does not seem to be a sufficient basis upon which to render a decision. Each case should be decided on its own facts, applying the clearest logic without regard to prior cases. Furthermore, it appears that this inconsistency may be mutual inasmuch as the Petitioner has taken the directly opposite stand to that of the Carrier.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1969.