



Award Number 17671

Docket Number CL-18028

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6498) that:

1. Carrier violated the rules of the Clerks' Agreement at East Buffalo Cooper-Cleaning tracks, Buffalo, N. Y., when on November 5, 1966 regularly established Roster "B" positions were blanked contrary to the intent and purpose of the rules of the current agreement, thereby reducing the forty (40) hour work week of affected employes to a thirty-two (32) hour work week.
2. Carrier shall now compensate the following named employes for wage loss sustained on November 5, 1966, on which date Carrier blanked their positions resulting in the loss of one (1) day's pay to each employe named below:

H. J. Pecky—Relief Foreman
Edward Smith—Cooper-Inspector
Edward Dyttmer—Cooper-Laborer

(Claim No. 1864)

EMPLOYEES' STATEMENT OF FACTS: The cooper-cleaning tracks at East Buffalo, New York are operated by the Carrier seven (7) days each week, and through long established practice, this facility has been subject to the provisions of Rule 23 of the basic agreement. The rule provides, among other things, a formula to be used in arriving at the regularly assigned eight (8) hour positions to be established each quarter. The fourth quarter schedule for 1966 furnished by the Carrier indicated fourteen (14) regularly assigned positions, ten of which had an assigned work week Monday through Friday with Saturday and Sunday rest days. The three positions here involved had an assigned work week as follows:

Employee	Title of Position	Assigned Work Week	Rest Days
H. J. Pecky	Relief Foreman	Wed. thru Sun.	Mon. & Tues.
Edward Smith	Cooper-Inspector	Tues. thru Sat.	Sun. & Mon.
Edward Dyttmer	Cooper Laborer	Thurs. thru Mon.	Tues. & Wed.

ber 4, 1966, claimants H. J. Pecky, Edward Smith and Edward Dyttmer were notified that because of this emergency, work at the Cooper-Cleaning track no longer existed and could not be performed, and their positions were abolished on November 5, 1966.

Under date of December 22, 1965 (Carrier's Exhibit "A") claim was instituted with the Agent by the Local Chairman, alleging a violation of Rules 23 and 28 of the applicable agreement. Claim was denied under date of February 15, 1967, and thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters. Claim was discussed in conference on October 17, 1967 and denied with denial confirmed on November 17, 1967 (Carrier's Exhibit "B"). Subsequent exchanges of correspondence is evidenced by the following exhibits:

Carrier Exhibit "C"—Carrier's letter dated December 8, 1967.
Carrier Exhibit "D"—General Chairman's letter dated December 13, 1967.
Carrier Exhibit "E"—Carrier's letter dated January 8, 1968.
Carrier Exhibit "F"—General Chairman's letter dated February 2, 1968.
Carrier Exhibit "G"—Carrier's letter dated February 14, 1968.

(Exhibits Not Reproduced)

OPINION OF BOARD: At approximately 3:30 P.M. Friday, November 4, 1966, Carrier notified Claimants that because of emergency conditions due to severe snow storm, their services would not be required and they should not report to work the following day, November 5. It has been agreed by both of the parties that the positions of Claimants were not abolished; therefore, it follows that Claimant's positions were temporarily suspended. Under the controlling Award No. 115 of Special Board of Adjustment No. 605, Rules Nos. 12 and 23 (having to do with "abolishment of positions" and "force reductions") are not applicable to the instant dispute. We are concerned only with the interpretation of Rule 28, which is:

"Rule 28—Guarantee

"Nothing within this Agreement shall be construed to permit the reduction of days for regularly assigned employees below five (5) per week, except as follows:

"(a) Week in which holiday occurs by the number of such days.

"(b) By conditions beyond control of the Carrier (see Note).

"NOTE: The term 'conditions beyond control of the Carrier' has reference to acts of Providence such as floods, fires, wash-outs but does not contemplate such matters as train failures or lack of business, except as provided in Rules 12 and 23. If worked any portion of the day a minimum of one (1) day will be allowed. If permitted to report and prevented from performing any service, a minimum of two (2) hours will be allowed. Payments under this rule to be at pro rata rate."

In other words, this Board has been called upon to determine whether or not the snow storm described in the record created a "condition beyond the control of Carrier" which would justify the temporary suspension of the named Claimants on the date in question.

The record discloses that Carrier's operations were seriously interfered with; that there was no need for Claimant's services on November 5, 1966 (cleaning and cooping cars); and that Claimants were put back to work promptly when the need for their services were required.

This Board finds that under the provisions of the above quoted Rule 28, Carrier had the prerogative to temporarily suspend the positions of the three named Claimants for the reason that the snow storm created a condition beyond control of Carrier. Because of this condition, services of Claimants were not required. Therefore, this claim 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 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 22nd day of January 1970.