

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee.

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

C. E. Denney and John A. Hadden, Trustees.

STATEMENT OF CLAIM: "Claim of System Committee of Brotherhood of Railway Clerks (1) that the carrier violated Rule 30 of the Clerks' agreement when it required regularly assigned employees to lay off and thereby denied them the right to work and be paid according to their bulletined assignments on November 3, 1936; and (2) that such regularly assigned employees shall now be reimbursed for wage loss suffered as a result of such action by the carrier."

EMPLOYEES' STATEMENT OF FACTS: "On General Election Day, November 3rd, 1936, the carrier denied certain regular assigned employees at Croxton Transfer, Croxton Dumps, Jersey City Docks, Inland Station, Weehawken and other points in New York Terminal and Jersey City areas the right to report for work and be paid for their regular assigned duties, other regular assigned employees in the same areas were permitted to work and be paid as per their assignments."

CARRIER'S STATEMENT OF FACTS: "On day before election day, November 2, 1936, some of the regularly assigned employees, who were not required for service at operations in the New York-New Jersey Terminal territory, were under Rule 30 notified that they would not be required for work on election day, November 3rd, 1936 and were not required to report for duty. Some of the regular employees who were required for available service did report for work and were used and paid for service performed. Employees who were instructed in advance that they were not needed on election day, November 3rd, 1936 did not receive any compensation."

There is in evidence an agreement between the parties bearing effective date of September 1, 1936, and the following rules thereof read:

**PLATFORM AND OTHER GROUP NO. 2 STATION AND
STOREHOUSE EMPLOYEES—RULE 25.**

"(a) Regularly assigned Roster 'B' platform positions will be established quarterly as follows:

1. The months used in these calculations shall be—
1st Quarter—January, February and March
2nd Quarter—April, May and June
3rd Quarter—July, August and September
4th Quarter—October, November and December

4. The rules cited nor practices or customs under these rules do not support this claim."

OPINION OF BOARD: It is conceded that Nov. 3, 1936 (Election day) was not a holiday and consequently the only portion of the rule, if any, which is applicable would be Section (c). Holidays as used in the agreement are defined by Rule 32 as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

Although the agreement was effected only a few months before the event involved, the parties are in hopeless disagreement as to what they meant by "conditions beyond the control of the carrier." The organization maintains that it embraces only catastrophies; the management, that it covers anything down to lack of business. In such circumstances the Board will not attempt to define the rule further than to ascertain whether it includes election day.

Under general rules of construction election day is of the class of exceptions that would ordinarily be included with the enumerated holidays if it was intended to be included as such. The contention of the carrier is that the lack of business resulting from election day was a condition beyond its control. If mere lack of business is to be considered as coming within that provision it would of course have the effect of writing the guarantee rule out altogether.

In other words it would amount to holding that the guarantee rule only operated when work was available. Such a view is utterly inconsistent with the idea of a guarantee which is to provide pay when work is not available. It is also quite inconsistent with the carefully devised plan for determining the number of regular assignments upon which the guarantee would operate. It should be understood that it applies only to regular assignments and the plan provides for a guarantee of a minimum number of assignments of only half the man-hours actually worked in the last previous corresponding quarter.

The claim will be limited to only such regularly assigned employes as would have worked on that day at Croxton Transfer, Jersey City (night) and Weehawken but for the layoff.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Rule 30 (c) is not applicable to election day.

AWARD

Claim sustained to extent indicated by opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1938.