

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement at Duane Street, North River, N. Y., when on May 20, 1948, it abolished 22 regular assigned positions of Watchmen, Head Watchmen and Gatemen, and concurrently therewith bulletined the same positions performing identical work in the Police Department as Patrolmen and,

That the Carrier shall now restore these positions to the scope and coverage of the Clerks' Agreement and compensate Employees A. Burslem, E. Kalchuck, J. Brown, C. Smith, H. McGuire, C. Spencer, J. Soller, J. Allen, J. Milek, N. Intersimone, P. Vuolo, P. Saitta, S. Jacobs, M. McNamara, H. MacPhee, P. Rosica, G. Chalmers, D. Young, A. Wilson, F. Lerno, A. Williams, B. Blundo and all other employees adversely affected by reason of this violation, for any and all wage loss sustained, retroactive to May 20, 1948.

EMPLOYEES' STATEMENT OF FACTS: Effective September 1, 1936, an Agreement became effective on the Erie Railroad which included within its scope Watchmen and Gatemen at Piers 20, 21 and 48, Duane Street Station, New York, N. Y. From time to time memorandums of agreement were negotiated with respect to the Watchmen and Gatemen at this operation, the latest memorandum of agreement being attached hereto, made a part hereof and identified as Employees' Exhibit "A". Watchmen are included in the current agreement as indicated under Rule 1, Group 2 of the Agreement dated December 1, 1943, amended July 1, 1945.

Under date of April 23, 1948, the Organization received a letter from Mr. H. D. Barber, a copy of which is attached hereto and identified as Employees' Exhibit "B", in which it will be noted the carrier sets forth their intentions to change the so-called Watchmen on the piers to Patrolmen.

The duties of the Watchmen on these piers are as set forth in the bulletins advertising these positions and the two copies of such bulletins are attached and identified as Employees' Exhibits "C" and "D". The duties on positions of Gatemen are as set forth in the bulletins attached and identified as Employees' Exhibits "E" and "F".

The duties of the Watchmen generally were to watch the piles of fresh produce placed on the piers by pier forces when unloaded from the cars and to prevent pilferage of such produce from the piles by truckmen or others on or about the piers. In other words it was their duty to protect the prop-

8. No reply from above quoted letter was received from Mr. Schreur and on July 7, 1948, we wrote him as follows:

"July 7, 1948
File 15.2-5

Mr. J. J. Schreur, General Chairman
Brotherhood of Railway & Steamship Clerks
848 Engineers Building
Cleveland, Ohio

Dear Sir:

On June 16, 1948, we wrote you in connection with your file 842 which concerns the assignment of patrolmen with police powers for the protection of property and other related duties at New York City piers and denied the request that these patrolmen positions be bulletined, awarded and assigned in accordance with the Clerks' Agreement.

To date we have received no reply and this letter is to inquire as to whether or not this matter is now closed.

Yours very truly,

(signed) P. W. Johnston"

9. On July 13th, General Chairman advised his intention to progress the matter to the Third Division, National Railroad Adjustment Board.

10. The former watchmen positions which were filled by employes who were under the scope of the Clerks' Agreement are not comparable to the newly established Patrolmen positions which are under the scope of the Police Agreement, and the work required of and performed by the Patrolmen is altogether different than that performed by the watchmen.

The watchmen positions were properly abolished under provisions of the Clerks' Agreement and the newly established patrolmen positions were properly established, bulletined and filled in accordance with the Police Agreement.

The Carrier reiterates its position in its opening remarks of this statement and assert that the National Railroad Adjustment Board, Third Division, is without authority or jurisdiction to proceed in this case which involves a jurisdictional dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The System Committee of the Brotherhood contends that Carrier violated their Agreement when, on May 24, 1948, it abolished 22 regularly assigned positions of head watchmen, watchmen and gatemen at Duane Street, North River, New York, and concurrently therewith established patrolmen positions in the Police Department to perform the duties of these positions. It asks that this work and these positions be restored to the Clerks under their Agreement and that the employes who held these positions, and all the employes adversely affected thereby, be compensated for any wage loss sustained as a result thereof, retroactive to May 24, 1948.

Group 2 of Rule 1 of the Brotherhood's effective Agreement covers "gatemen" and "watchmen not having police authority".

The Agreement further provides, as far as here material, as follows:

"Rule 1 (b) Should any position or positions now covered by all the rules of this agreement be transferred to other departments or offices, or new positions be created taking over the duties of positions now covered by all the rules of this agreement, such trans-

ferred or new positions will continue under all the provisions of this agreement unless otherwise mutually agreed to between the Management and General Chairman or their representatives.

Rule 1 (c). When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

1. To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

Rule 55—Effective Date and Change.

This Agreement shall supersede existing agreements and shall become effective December 1, 1943, and will remain in effect for one (1) year and thereafter until it is changed as provided herein or under the provisions of the Amended Railway Labor Act.

Should either party to this agreement desire to revise or modify these rules, written advance notice, containing the proposed changes, shall be given and the first conference shall be held within thirty (30) days from date of notice. Further conferences, if necessary, shall be held promptly and in compliance with the provisions of the Amended Railway Labor Act. Pending final settlement of any dispute, these rules shall remain in effect."

The record discloses that as of May 24, 1948, the Carrier, without properly negotiating therefore in the manner as provided in its Agreement with the Brotherhood, abolished the positions of 15 watchmen and seven gatemen at its Duane Street Station, New York City, positions covered by its Agreement with the clerks and the work of which is within the scope of their Agreement. At the same time the Carrier established 20 patrolmen's positions under Rule 6 of its Agreement with the National Council of Railway Patrolmen's Union to work on the freight pier at Duane Street in North River, New York. While these new positions were assigned police authority, a duty excepted from the Clerks' Agreement, it is evident, although the evidence in regard thereto is not sufficient to determine the exact amount thereof, that these new patrolmen, and others outside of the Clerks' Agreement, performed a very substantial part of the work which, prior to the positions being abolished, had been performed by the occupants thereof.

The record discloses that this is not a jurisdictional dispute between two classes or crafts of employes as to which is entitled to perform a certain type of work, of which this Board has no jurisdiction, but is a claim relating to a violation of the scope of the Clerks' Agreement by the removal of work therefrom.

Carrier contends that it has the right to determine and control its operations and that the exercising of that responsibility by having uniformed patrolmen, with police authority, take over these duties on the piers was within that right. It is true that the determination of such matters is the prerogative of Management and rests primarily with it except to the extent it has limited itself by contract. In respect to such limitations we have often held that work embraced within the scope of an agreement cannot properly be removed therefrom by the carrier and assigned to employes not subject to its terms.

Carrier suggests that the change was necessitated because of the inefficient and unsatisfactory manner in which gatemen and watchmen were performing their duties, and offered evidence to substantiate that fact. Even if true that would not authorize Carrier to remove the work from the Clerks' Agreement. In its supervision of these employes Carrier could pass on their fitness, ability and conduct and, if necessary, take proper steps, as in the Agreement provided, to correct the trouble, but not by the method here used.

While Carrier, because of the exception contained in the Clerks' Agreement, could have established patrolmen positions on the piers at Duane Street in North River under its agreement with the National Council of Railway Patrolmen's Union, A. F. of L., with police authority and performing strictly the duties of police officers it could not create such positions and transfer to them any of the duties which gatemen and watchmen, under the Clerks' Agreement, had been performing by merely adding police authority thereto. Such, without authorization through negotiation as provided by the rules of the Clerks' Agreement, is a violation thereof.

The work thus removed should be restored to employes covered by the Clerks' Agreement but the evidence is not sufficient to here determine the amount thereof and the number of positions that necessarily must be reestablished to perform it. It is therefore ordered that a joint check be made on the property by the parties for the purpose of determining the extent of the work now being performed by these patrolmen, which was formerly done by the gatemen and watchmen whose positions were abolished, together with the amount of such work now being done by others outside of the Clerks' Agreement, with directions that it all be restored to employes covered by the Clerks' Agreement and such number of gatemen's and watchmen's positions be reestablished as may be necessary to accomplish that fact.

It is also ordered that when the extent of the work, which must be returned to employes covered by the Clerks' Agreement, has been determined that as many of the employes who held these positions, as it may be determined are necessary to do the work and who have been adversely affected by reason of the Carrier's actions, together with all other employes who have been adversely affected thereof, be compensated for all losses sustained by reason thereof, retroactive to May 24, 1948.

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 Employes involved in this dispute are respectively carrier and employe 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 Carrier violated the provisions of the parties' Agreement.

AWARD

Claim sustained as to Carrier having violated scope of the parties' agreement but remanded for joint study to determine the extent thereof with directions for the return of the work to employes under the Clerks' Agreement and compensation awarded on the basis thereof, as in the Opinion more fully set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.