

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5800) that:

1. (a) Carrier violated the rules of the Clerks' Agreement when they permitted employes from 29th Street Station (New York City) and Pier No. 67 (New York City) to displace regular assigned men at 28th Street (New York City) for overtime on the following dates:

Date	28th St. Men Displaced	Total Overtime Hrs. Deprived of
August 1, 1963	3	7
August 22, 1963	1	2

(b) Carrier now be required to reimburse the following employes for wage loss sustained as a result of being deprived overtime work on their assigned position, the extent of the loss to be determined by a joint check of the Carrier's records.

28th Street Assigned Men Affected

A. DePalma	W. Lindsey
D. A. Richards	S. Stimpfel
V. Aliberti	

2. (a) Carrier violated the rules of the Clerks' Agreement when they permitted employes from Pier No. 67 (New York City) and Pier No. 68 (New York City) and 28th Street (New York City) to displace regular assigned men at 29th Street Station (New York City) for overtime on the following dates:

Date	29th St. Men Displaced	Total Overtime Hrs. Deprived of
August 1, 1963	7	12
August 2, 1963	13	26
August 5, 1963	1	$\frac{1}{2}$
August 6, 1963	1	2
August 7, 1963	3	$3\frac{1}{2}$
August 8, 1963	4	$6\frac{1}{2}$
August 12, 1963	10	$8\frac{1}{2}$
August 13, 1963	2	$1\frac{1}{2}$
August 14, 1963	9	$20\frac{1}{2}$
August 15, 1963	3	5
August 16, 1963	14	$22\frac{1}{2}$
August 19, 1963	2	$3\frac{1}{2}$
August 20, 1963	3	8
August 21, 1963	7	15
August 22, 1963	1	2
August 23, 1963	13	71
August 26, 1963	3	6
August 27, 1963	3	$5\frac{1}{2}$
August 28, 1963	3	$3\frac{1}{2}$
August 29, 1963	9	$19\frac{1}{2}$

(b) Carrier now be required to reimburse the following employees for wage loss sustained as a result of being deprived overtime work on their assigned position, the extent of the loss to be determined by a joint check of the Carrier's records.

29th St. Assigned Men Affected

D. P. Kelleher	L. Hillary
J. Addicks	R. Brannon
T. P. Corcoran	J. T. Dixon
J. Horvath	N. Spencer
J. Stubits	I. Bleier
J. Boykins	G. Chamarre
A. Aprea	E. Williams
H. Kelly	H. Delearie
P. Baldasare	L. Ballard
M. Francis	S. Hayes
N. Jennings	A. Gross
F. Wurczinger	P. E. Emanuele
S. Chandler	G. Golden
H. Ford	C. Sweet
G. Westcott	

3. (a) Carrier violated the rules of the Clerks' Agreement when they permitted employees from Pier No. 67 (New York City) to displace regular assigned men at Pier No. 68 (New York City) for overtime on the following dates:

Date	Pier No. 68 Men Displaced	Total Overtime Hrs. Deprived of
August 9, 1963	2	6½

(b) Carrier now be required to reimburse the following employees for wage loss sustained as a result of being deprived overtime work on their assigned position, the extent of the loss to be determined by a joint check of the Carrier's records.

Pier No. 68 Assigned Men Affected

G. Quinn	R. Frieri
J. Betteneschi	H. Frazier
W. Raynor	S. Chew
P. Rule	R. Evans
E. C. Ferranteno	J. Scott
E. Schaeffer	D. Lupo
J. Schultz	J. Guida
D. Nunziatta	S. Jacobs
C. Heika	D. Lucivero

4. The Carrier reimburse any and all employees involved for all wage loss sustained on all subsequent dates until the violation herein complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to merger of the Erie Railroad Company and Delaware, Lackawanna and Western Railroad Company, the Erie Railroad had a facility known as 28th Street Station (New York) which consisted of freight offices at 28th Street freight platform at 28th and 29th Streets and Pier forces at Pier 67. Contrary to the provisions of Rule 7 (a) of the Clerks' Agreement, vacancy bulletins covering Roster B positions did not specify the exact work location, but simply showed "28th Street Station." After the positions were assigned, the Local Agent would issue order to have a given number of stowers sent to Pier 67 and a certain number to 28th Street. The General Foreman would then pick the men who would work at these locations. Inasmuch as all positions were considered "28th Street Station", any overtime necessary would be given to the senior employee. In other words, if overtime was necessary at Pier 67, an employee working as an R&D Clerk or Checker at 28th Street who was senior to a Stower at Pier 67, would get the overtime as a Stower at the pier, and the employee who had worked as a Stower at Pier 67 all day would go home.

The merger of the former Erie Railroad and former Delaware, Lackawanna & Western Railroad was approved by the Interstate Commerce Commission effective October 15, 1960. Under date of October 3, 1961, Memorandum of Agreement was executed by the parties merging freight office and pier forces of the former Delaware, Lackawanna & Western Railroad Company at Pier 68, North River, New York with freight office, platform and

that existed concerning overtime work had been one of long standing and was of the employees' own choosing. The manner in which overtime was worked at these locations was well known by General Chairman Schueur and the Organization has acquiesced for years.

At conference October 4, 1963, when Claim No. 1428 was discussed, Organization representatives were undecided as to how overtime at these locations should be handled, and it was even suggested by the Carrier that a referendum vote be taken to determine what system the employees wanted to follow. It was agreed during conference that Claim No. 1428 would be held up as the Committee desired to investigate further to determine whether the old practice and procedure should be continued or a different system adopted. The Memorandum of Understanding dated August 3, 1964 resulted, and it is our considered opinion that both Claim No. 1428 and this claim should be withdrawn and closed. Otherwise, denial decision during conference is herewith confirmed. Claim denied.

Yours very truly,

/s/ F. Diegtel"

The Organization refused to withdraw either Claim No. 1428, which is already before this Board for adjudication, and identified as "CL-15540", or the instant claim. Correspondence, including Carrier's conference notes, concerning both claims is attached hereto as Carrier's Exhibits D through H.

(Exhibits not reproduced.)

OPINION OF BOARD: The same factual circumstances and issues giving rise to the claims in this case are dealt with by the Board in Award No. 14229, in which the claims were 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

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