



Award Number 17919
Docket Number CL-18158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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-6542) that:

1. Carrier violated the rules of the Clerks' Agreement at Pier 20, North River Station, New York City, when it failed to call and use Acting Chief Clerk George Christ on July 16, 1967 to perform work assigned to his position.
2. Carrier shall be required to compensate George Christ, four (4) hours pay at time and one-half at rate of the Chief Clerk's position, \$571.41 per month, for July 16, 1967. (Claim 2105)

EMPLOYEES' STATEMENT OF FACTS: In July of 1967, the railroad industry was threatened with a strike of the labor organizations comprising what is commonly referred to as the "Shop Crafts." Sometime Sunday, July 16, 1967, Carrier officials learned that the strike on the Erie Lackawanna Railroad Company would take effect at 12:01 A.M., Monday, July 17, 1967, therefore, on Sunday, July 16, 1967, the Carrier utilized the services of a General Foreman (a Roster "B" employe) to perform Roster "A" work normally and historically performed on the Chief Clerk's position. The General Foreman was compensated for four (4) hours at time and one-half for the service he performed on Sunday, July 16, 1967.

The position of Chief Clerk at Pier 20, North River Station, New York was temporarily assigned to employe George Christ (the claimant) while employe J. Attanasio the regular assigned Chief Clerk was on vacation for the period July 10, 1967 through July 28, 1967, inclusive.

Sunday, July 16, 1967, the claim date, was a regularly assigned rest day of the Chief Clerk's position.

One of the normal functions and assigned duties of the Chief Clerk at Pier 20, North River Station, New York City, is to maintain records pertaining to the names, addresses and telephone numbers of employes assigned to that work location. From these records flows the duty and responsibility of telephoning and notifying employes to report for work and other matters, in addition to furnishing certain information to the Pier 5 clerical forces, when required, all of which forms an integral part of the Chief Clerk's assignment.

On August 17, 1967 the Local Chairman filed a claim with the Agent (Employees' Exhibit A) who denied the claim on October 12, 1967. (Employees' Exhibit B) On October 23, 1967, the Local Chairman notified the Agent that his decision was not acceptable and would be appealed. (Employees' Exhibit C)

On November 1, 1967, the Division Chairman progressed the claim to Superintendent M. H. Rozelsky, (Employees' Exhibit D) who denied the claim on November 29, 1967. (Employees' Exhibit E) On December 20, 1967, the Division Chairman notified the Superintendent that his decision was not acceptable and would be appealed. (Employees' Exhibit F)

On January 2, 1968, the General Chairman progressed the claim to Mr. R. A. Carroll, General Manager-Labor Relations, the highest officer designated by the Carrier to handle labor disputes. (Employees' Exhibit G) Conference was held on July 17, 1968, during which time the parties were unable to resolve the dispute and on August 22, 1968, Mr. R. A. Carroll denied the claim. (Employees' Exhibit H)

On September 5, 1968, the General Chairman wrote to Mr. Carroll, taking exception to various statements made in his letter dated August 22, 1968. (Employees' Exhibit I)

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: On July 15, 1967, the Shop Crafts System Federation advised that the Erie Lackawanna was not one of the railroads selected for the strike called for July 17, 1967, at 12:01 A.M. However, on Sunday, July 16, 1967, at approximately 4:00 P.M., Carrier was notified by the System Federation that the Erie Lackawanna was to be included. On learning this, the General Chairmen of the various other crafts were contacted as soon as possible to determine if their members would honor picket lines established by the striking shop craft employees. The General Chairman of the Petitioning Organization advised that all employees coming under the clerical agreement were duty bound to do so. Based thereon and the same advice received from other General Chairmen contacted, Carrier was forced to promptly notify all employees it could that because of the emergency, positions were annulled effective July 17, 1967.

The Superintendent of Lighterage and Stations called his clerical staff at Pier 5, Hoboken, N. J., to report for work as soon as possible to type notices annulling all regular positions coming under his jurisdiction and to telephone and so notify the employees. The General Foreman at Pier 20, Hoboken, was called because he knew who the regularly assigned Group 2, or Roster B employees at that location were and could expedite the furnishing of their names, telephone number and/or address to the clerks at Pier 5.

Claim instituted on behalf of acting Chief Clerk at Pier 20, George Christ, hereinafter referred to as claimant, alleging that he had a demand right under the applicable rules agreement to be called to perform the work performed by the General Foreman on July 17, 1967, was denied at all levels of appeal. The exchange of correspondence between the parties is attached as Carrier's Exhibits A through K.

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts are not in dispute. About 4:00 P.M. on Sunday, July 16, 1967 Carrier was advised by the Shop Craft Organizations that they were to strike the Carrier at 12:01 A.M. on July 17, 1967 and that a picket line would then be established. In view of the fact that employees cov-

ered in the Clerks' Agreement would not cross the picket line, it became necessary for the Carrier to annul all positions. Pier 5 clerical personnel were ordered to report as soon as possible to type notices annulling all regular positions and to telephone the affected employees. The General Foreman of Pier 20 was called to work and he furnished Pier 5 clerical employees a list of Group 2 employees at Pier 20 who were to be notified of the annulment of their positions. He worked and was paid for (4) hours at his time and one-half rate.

Employees contend that the Claimant, who was temporarily filling the Chief Clerk position at Pier 20, should have been called to furnish the information and not the General Foreman.

Both the Claimant and the General Foreman are covered by the Clerks' Agreement. Both hold seniority within the same seniority district. But the Chief Clerk is listed in Roster "A" and the General Foreman in Roster "B".

Rule 20-3 (f) entitled "Work On Unassigned Days" reads as follows:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases, by the regular employees."

Employees argue that the Claimant was "the regular employee" who should have been called because there was no "available extra or unassigned employee" who did "not have 40 hours of work." Carrier counters by contending that the General Foreman was "the regular employee."

The Chief Clerk maintains a record of the names, addresses and telephone numbers of employees who are assigned to work at Pier 20. The General Foreman, however, keeps a daily record of all regular and extra Group 2, Roster B employees working on Pier 20. The Chief Clerk did not have that information. Had the Chief Clerk been called he would have had to check with the General Foreman to ascertain who were the regularly assigned employees entitled to annulment notices. The General Foreman did no work on the record book maintained by the Chief Clerk. All he did was to use this record book to furnish the addresses and telephone numbers for those regularly assigned employees at Pier 20 who were so designated in his daily records. He performed no work regularly assigned to the Chief Clerk. He and not the Claimant was the "regular employee" entitled to be called under Rule 20-3 (f).

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 Carrier did not violate the Agreement.

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 12th day of May 1970.