NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20764
THIRD DIVISION Docket Number CL-20580

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7460) that:

1. Carrier violated the current Clerks' Agreement commencing February 25, 1972 when it removed the lighterage work from the Harlem River Lighterage Dock at Harlem River, New York from the employees covered by the Scope of the Agreement by diverting lighterage work from Harlem River Lighterage Dock to Greenville Piers, New Jersey.

2. All of the work referred to in (1) above shall be returned to the Group I and Group II employees of the Harlem River Lighterage Dock seniority district at Harlem River, New York.

3. Group II employees, York Wright, Riley Geddis, J. B. Jones, E. J. Spicciati, Zollie Mathews and a Group I employee, A. Maslin, Assistant General Foreman, Lighterage Dock at Harlem River, New York shall be compensated for eight (8) hours pay per day at the protected rate of their assigned positions, including all subsequent general wage increases, commencing February 25, 1972 and continuing until the violation of the Agreement is corrected.

OPINION OF BOARD: By Bulletin, dated February 15, 1972 Claimants' positions at Carrier's Harlem River literage facility were abolished as of February 24, 1972. The reason given for the action was a decrease in business; the remaining literage work was rerouted to Greenville, New Jersey where the bulk of the Carrier's literage freight was handled. At Greenville the handling of literage freight had been performed for many years by a contractor's employees who are represented by the International Longshoremen's Association.

Petitioner argues that the action of Carrier in this dispute violated the Scope Rule of the Agreement as well as the Merger Agreement. Before we may consider the merits and remedy requested, Carrier raises the issue of jurisdiction. With respect to the alleged violation of the Merger Protective Agreement this Board has in a number of recent Awards taken the position repeatedly that it has no authority to inject itself

into disputes involving Merger Protective Agreements wherein there are arbitration procedures established (see for example Awards 20289, 19950 and 19926). In this dispute, we reaffirm that position.

With respect to the Scope Rule, Petitioner urges that Carrier had no right to assign the work in question to employees of another craft - namely the Longshoremen employed by the contractor - and should return the work to the Harlem River facility. This contention completely parallels the dispute dealt with by this Board in 1940 involving the Organization herein and the Longshoremen in the New York harbor as set forth in Award 1184. In that Award the Board in effect suspended the application of the scope rules of Agreements between the Organization and various Carriers operating in the New York harbor until such time as the jurisdictional dispute between the Clerks and the Longshoremen over freight handling at various piers in the harbor area, was settled. That dispute is still not settled and we must, as the Board did in Award 1184, dismiss the Claim herein.

For the reasons discussed above, it is apparent that this Board does not have jurisdiction to consider the Claim involved herein: it must be dismissed.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Board does not have jurisdiction over the dispute herein.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: R. W. Brubaker
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.