

C  
O  
P  
Y

Docket No. CL-7789  
Award No. 13

SPECIAL BOARD OF ADJUSTMENT NO. 177 (PRR)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-B-1 and 3-B-2 when fifty cars of freight consigned to President Station, Baltimore, Maryland, were diverted to Trenton, New Jersey, and unloaded at that point.

(b) L. A. Muscella and one hundred six other named employees at President Station be allowed settlement in an equal distribution of the claim on the basis of twelve hours pay for each carload so diverted. (Docket E-915)

FINDINGS: It appears from the record that the President Street (or Station) Freight House at Baltimore is maintained as transfer point for LCL freight, which is fluctuating and unpredictable in volume, and there is no complaint that Carrier's facilities and employed forces were not adequate for the normal handling of the work. We think the record further shows that at the times of the diversion of cars to Trenton, the President Street Freight House and the available gangs of employees there were being used substantially to full capacity without being able to keep their work current; that a serious congestion of freight and delay in handling resulted; that in handling LCL freight speed is particularly important, and that the use of more gangs or of more overtime was not practicable for speeding the work.

The sole shown purpose of the diversions of cars to Trenton was to relieve the congestion at President Street; the number of cars diverted was no more than necessary to relieve the congestion and the diversions are not shown to have interfered with subsequent full time employment at President Street.

The Employees take the position that "Rule 3-E-1 provides that work cannot be transferred from one seniority district to another without proper action under the rules agreement" and that the employees at President Station had an absolute right to handle all cars consigned to that station.

Carrier does not deny that the clerical forces have the contract right to perform this work but it does deny that the contract gives the right exclusively to employees holding seniority at the President Street Freight House.

We shall not attempt to determine that issue. We think the claim is properly determinable on another ground. It is an elementary rule of law that in any contract where there is no provision as to time for performance a reasonable time is implied. What constitutes reasonable time depends on the situation and circumstances involved. So under the contract before us, balancing any right of the employees to perform work is the obligation to perform that work with reasonable dispatch, and where because of conditions beyond Carrier's control the employees are unable to accomplish timely performance, Carrier may, to the extent necessary to permit adequate performance, remove the accumulated backlog of work to another seniority district. Such was the situation here.

Award No. 13

AWARD: Claim denied.

Signed this 17th day of July, 1957.

/s/ R. H. Skinner, Jr.  
R. H. Skinner, Jr., Carrier Member

S. V. W. Loehr, Employee Member

/s/ Mortimer Stone  
Mortimer Stone - Chairman