

SPECIAL BOARD OF ADJUSTMENT NO. 541
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
And
ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by failing to continue Plumber Helper Wayne Jenks as One Truck Driver operating the truck for the plumbing gang, beginning March 16, 1964, and continuing.
2. That Plumber Helper Wayne Jenks be now compensated at his respective rate for all hours of work involved, beginning March 16, 1964, and continuing until this condition has been corrected.

FINDINGS:

The gist of the present claim is that the work of operating the truck assigned to the plumbing gang belongs exclusively to the plumber helper, the claimant herein, who had been performing the work of that position in addition to driving the truck. Under that theory, the plumber helper could not be laid off or his position abolished, so long as any transportation for the plumbing gang is required. While it would appear that such a rule would achieve some impractical results, as evidenced by the instant situation where the plumbing gang had dwindled in size to a foreman, lead plumber and plumber, we, of course, would enforce it if it were based on a clear and definite agreement between both parties.

There is nothing in the applicable collective bargaining agreement that, by fair interpretation, provides a valid basis for this claim, and while there is some evidence of past practice, it is not sufficient to establish the exclusivity advocated by Petitioner. The fact that one supervisory employee, Assistant Engineer Parsons, issued notices back on February 15 and April 5, 1955, regarding uniform posting procedures for positions that included truck driving duties and the additional fact that thereafter in the same year he agreed with the general chairman to assign a regular truck driver to track sections "now furnished with trucks" do not manifest the necessary clear expression of intention on Carrier's part to accept a long range commitment to restrict the operation of the truck assigned in a small plumbing or carpentry unit to any one employee. We are not in accord with Petitioner's view that the creation and use of a regular combination position of Plumber Helper-Truck Driver means that no other member of the plumber gang may drive trucks, particularly when the number of plumbers in the gang has been reduced to three in number.

The claim will be denied.

AWARD: Claim denied.

Dated at New York, N.Y., this
6th day of February, 1969.

/s/ Harold M. Weston
Harold M. Weston, Neutral

/s/ A. J. Cunningham
A. J. Cunningham, Organization Member

/s/ R. A. Carroll
R. A. Carroll, Carrier Member