

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood of Railway Clerks that Mediation Agreement Case No. A-225, signed in Cleveland, Ohio, May 20, 1936, has been violated by the failure and refusal of the Carriers to make effective the provisions of Section 6 of said agreement; and,

(b) That C. & O. employees be placed in the joint operation at Muncie, Indiana, in accordance with the provisions of Section 6 of the Mediation Agreement, and that all employees who have suffered wage loss by reason of the failure and refusal of the Carrier to apply the provisions of the agreement be compensated for such wage loss.

EMPLOYES' STATEMENT OF FACTS: Prior to May 1, 1933, the Chesapeake and Ohio Railway Company and the New York, Chicago and St. Louis Railroad Company (which will hereinafter be referred to as the Nickel Plate) maintained separate freight house facilities, each road having its own freight office, warehouse, and yard forces, the employees on the Nickel Plate being represented by the Brotherhood of Railway Clerks and the employees on the Chesapeake and Ohio being represented by the Chesapeake and Ohio Clerks' Association.

Effective May 1, 1933, the work previously performed in the C. & O. operation was transferred to and placed in the Nickel Plate operation and under the jurisdiction of the Nickel Plate Railroad by four-party agreement between the two respective Managements and representatives of the two respective Organizations.

The C. & O. work was placed under the Nickel Plate Agreement with the Brotherhood of Railway Clerks and all vacancies thereafter continued to be filled from Nickel Plate seniority rosters.

Effective May 20, 1936, a Mediation Agreement was reached at Cleveland, Ohio covering Chicago, Illinois, Peru and Muncie, Indiana consolidations, reading as follows:

"MEDIATION AGREEMENT

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

and the

New York, Chicago, and St. Louis Railway Company

Subsequent to that decision of the National Mediation Board, the employees requested this carrier to join in submitting this dispute to your Board, but the Carrier declined as no dispute existed with its employees as to the application of the Mediation Agreement. This dispute is in reality between the Chesapeake and Ohio Railway Company and its employees on the one hand and the Nickel Plate Road and its employees on the other hand, and we adhere to the view that it was for the Mediation Board to decide which interpretation is correct.

OPINION OF BOARD: This claim is predicated upon an alleged breach, by the carrier, of Item 6 of Mediation Agreement, Case No. A-225. That was a four party agreement executed by the managements of the Chesapeake and Ohio and the Nickel Plate and by the System Boards of the employees—represented by C. B. Moore and E. J. Dollard respectively.

The agreement was designed to settle controversies growing out of the consolidation of freight house facilities of the two railroads at several points among which was Muncie, Indiana. It appears from Claimant's ex parte submission that at Muncie "the C. & O. and Nickel Plate facilities were consolidated by placing the C. & O. work under the jurisdiction of the Nickel Plate Management and the C. & O. work under the Nickel Plate Agreement, **preserving no rights for the C. & O. employees to fill or have anything to do with the work thereafter.**"

Item 6 of the Mediation Agreement provides:

"It is further agreed that at Muncie a similar arrangement to the above shall be made by building up the force of Chesapeake and Ohio employees, as business may require, from this date until the proportion between the two roads is equitably based on the amount of work of each road."

Since the execution of the agreement vacancies have occurred in the force at Muncie which have been filled by employees under the Clerks' Nickel Plate agreement to the exclusion of C. & O. employees. So filling such vacancies was clearly in violation of Item 6 of the Mediation Agreement. The question is: who is responsible for the violation?

We do not have to go beyond the ex parte submission of the System Committee to determine that it is **not** the C. & O. For it is repeatedly asserted that the system Committee and the C. & O. management are in full accord as to the meaning of Item 6; and that its application would call for filling the vacancies which have occurred at Muncie with C. & O. men.

It is equally clear from the Committee's ex parte submission who **is** responsible for the failure to fill such vacancies in accordance with the letter and spirit of Item 6. At page 18 of the Committee's submission it is said:

"Mr. Dollard, General Chairman of the Nickel Plate System Board, has taken the position that the Mediation Agreement does not apply to either the Peru or Muncie, Indiana consolidations."

In support of that statement a letter of Mr. Dollard's is set out which is, in effect, a repudiation of Item 6 of the Mediation Agreement.

Again, with commendable candor, claimants attach to their submission, as Exhibit "H," a letter from the Vice Grand President of the Brotherhood, L. B. Snedden, to the Grand President, George M. Harrison. (Mr. Snedden was, in large measure, responsible for the success of the negotiations leading up to the execution of the Mediation Agreement.) In that letter he said:

"The mediation agreement is plain enough and speaks for itself, and as it was agreed to by the Management of both the railroads

involved, as well as the General Chairmen of both System Boards, then I feel that each General Chairman should be requested to live up to the terms of the agreement, not only as provided in Items 1, 2, 3, 4, and 5, and but Item 6 as well.

"If any additional forces have been put on at either Muncie or Peru contrary to the terms of Item 6 of the mediation agreement, then I would suggest that such employes who were put on in violation of Item 6 of the mediation agreement be removed, and a like number of employes from the other road be put on to take their places, so that the terms of all parts of the mediation agreement be carried out in good faith by all parties to the agreement.

"I am furnishing Brothers Moore and Dollard with copies of this letter for their information, and would suggest that you write each of them, calling upon them to carry out the terms of the mediation agreement in full, and should either of them fail to comply with your request, that you proceed under the laws of the Brotherhood to take such steps as may be necessary to see that each System Board does live up to its agreements."

Upon the Committee's own version of the situation it clearly appears that the System Board of the Nickel Plate acting through Mr. Dollard is responsible for the violation of Item 6 upon which the claim is based. Certainly the Chesapeake and Ohio is not.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier has not violated Item 6 of the Mediation Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.