

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 that the Carrier violated and continues to violate the Clerical Agreement when, without conference or agreement, it arbitrarily removed or permitted to be removed out from under the scope and operation of the Agreement certain clerical work in the Purchasing and Stores Department at Cleveland, Ohio, and thereafter performed or permitted to be performed the said clerical work by persons not covered by the Clerical Agreement and holding no rights thereunder, and

(b) That all employees adversely affected by reason of this violation be compensated for any and all wage loss sustained, retroactive to February 16, 1948. Should there be no such employees at the time this claim is settled, then claim is made on behalf of the regularly assigned employees that they be paid at the rate of time and one-half time the amount of time equivalent to that necessary to perform the work arbitrarily removed, this penalty to continue until such time as the Agreement violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 16, 1948, The Chesapeake and Ohio Railway Company (hereinafter referred to as the C&O), maintained in its Cleveland, Ohio, General Offices an office known as the Purchasing and Stores Office in which it performed work for the C&O and the New York, Chicago and St. Louis Railroad Company (hereinafter referred to as the Nickel Plate), the work of both roads having been placed under the C&O Clerical Agreement through negotiations and by agreement of the parties.

During the latter part of 1947, the C&O divested itself of the controlling interests in the Nickel Plate and on February 16, 1948, the C&O and Nickel Plate Purchasing and Stores Office was separated by the Nickel Plate removing its work from the C&O office in the Midland Building and placing it in another building secured for that purpose at 116 West Saint Clare Avenue, Cleveland, Ohio.

The work was removed without conference or agreement with the Brotherhood.

CARRIER'S STATEMENT OF FACTS: On September 1, 1930, the general Purchasing and Stores Department offices (hereinafter referred to as Purchasing Department), of The Chesapeake and Ohio Railway Company, were transferred from Richmond, Va., to Cleveland, Ohio. On September

Award No. 3193—The basis of the claim in this case was the use of the incumbent of an excepted position to perform the work of yard clerk to avoid payment of overtime to the regularly assigned yard clerks. That case is in no way similar to the instant claim and is, therefore, inapplicable.

Award No. 3220—The carrier in this case was held to have violated the rules of the agreement when it used employees of the Railway Express Agency to transfer a freight shipment, which work belonged to clerical employees covered by an agreement. This case likewise involves an entirely different principle and is inapplicable to the instant claim.

Award No. 3360—This is another case where the carrier used an employee not covered by an agreement to perform clerical work on Sundays and holidays instead of using the incumbent of the position at overtime rate. It is, therefore, obviously inapplicable to the instant claim.

Award No. 3371—The same principle is involved in this case as in Award 3360 and is, therefore, inapplicable.

Award No. 3375—This case is inapplicable for the reason stated as to Award 3360.

Award No. 3381—This is another case of using employees not covered by the clerical agreement to perform Sunday and holiday work and is, therefore, inapplicable.

Award No. 3425—This case involves the same facts and principles set out in Award 3381 and is, therefore, inapplicable.

Award No. 3465—In this case there was a vacancy on the position of ticket clerk and no extra clerks being available, the Ticket Agent and Head Ticket Clerk (excepted positions) were used to perform the work instead of using regular first-trick clerks. The facts and principles involved in that case are in no way similar to the instant claim and are, therefore, inapplicable.

Award No. 3563—This involved the abolition of a clerical position whose work and duties were thereafter assigned to employees not covered by the agreement. This is in no way similar to the instant claim where no C&O work was taken from a clerical position and assigned to C&O employees not covered by the agreement.

Award No. 3744—That case involved assignment of clerical work to a machinist, and is in no way applicable to the instant claim.

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A review of all of the Awards upon which the employees rely in support of their position shows that they involve cases where carriers have (1) taken work covered by an agreement and contracted it out to a third party, (2) used employees of another class or craft to perform clerical work, or (3) abolished clerical positions and assigned the work to excepted or official positions. The case under consideration does not fall within any of these categories. The NKP work in question, while performed under the C&O Clerks' Agreement was always NKP work. When the NKP no longer desired the C&O to perform its purchases and stores work, the C&O's right to perform such work with its clerical employees ceased. Again, as stated in the opinion in Award 3450, the work "was taken over by another with superior rights to control it".

The claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts insofar as pertinent to a disposition of this claim are as follows: Carrier, prior to November 1, 1947, retained stock control of the New York, Chicago and St. Louis Railroad, hereinafter referred to as the Nickel Plate. During the period of such stock control, the General Purchasing and Stores Departments of Carrier, Pere Marquette

and Nickel Plate at Cleveland, Ohio, constituted a combined operation and all employes in said combined operation were brought under Carrier's Clerks' Agreement. About November 10, 1947, Carrier became divested of its interest in the Nickel Plate and on February 15, 1948, and thereafter, the Nickel Plate performed its own purchasing and general stores operation. As a result of Carrier's employes no longer performing Nickel Plate work about seventeen positions were abolished at Cleveland.

Employes claim a violation of the Scope and Seniority rules of the Agreement. In effect, the main contention of the Employes is that Carrier's contract with its employes is entitled to precedence over arrangements or agreements with Nickel Plate concerning the Purchasing and Stores Department work.

We do not view this docket from the standpoint of determining whether the Collective Bargaining Agreement supersedes any arrangement between Nickel Plate and Carrier with respect to the work of the Purchasing Department at Cleveland, but rather from the standpoint of determining whether the Scope and Seniority rules of the Agreement were violated by the removal of the work and the abolishment of the position.

There is no doubt that the work and positions which were transferred to the Nickel Plate when performed by Carrier employes came within the coverage of the Scope and Seniority rules of the current Agreement. Does that mean that during the life of the current Agreement the same may not be removed except by negotiation? In our opinion, it does not. The Scope and Seniority rules of the Agreement are not static in the sense that they attach to work and positions in being at the time of the signing of the Collective Bargaining Agreement and to nothing more nor less. On the other hand, they are ambulatory in the sense that they follow along with the operations of Carrier and attach and detach themselves to work and positions which are of a class defined therein as the operations of the Carrier require and thus with increasing needs, the amount of both covered work and positions expands and with decreasing needs contracts. If this were not true, there would be no need for rules concerning establishment of new positions nor for rules concerning abolishment of existing positions. Now, each time a new position is created, negotiation is not necessary to bring it within the provisions of the Scope and Seniority rules, nor is it necessary to negotiate each time a position is abolished. Hence, the seemingly plausible argument of the employes that work or positions negotiated into an Agreement or covered by its rules can only be removed through the same procedure, to-wit: negotiation and agreement is not entirely tenable. When the need for the performance of work disappears, it is removed from the Agreement by the Agreement's own terms.

The effect, generally speaking of the Scope and Seniority rules is to assure that any work necessary in performing the functions of carriers belongs to such classes of employes as are protected by collective agreements. It is because of this principle that penalties have been assessed against carriers in farming out work covered by agreements and likewise carriers have been held in violation when new work not in existence as of the date of agreements, but of a class defined therein has been assigned to employes outside the said agreements.

Now, in this instance the work performed in connection with the Nickel Plate's purchasing operations was being done under agreements between the Carrier and Nickel Plate. It was not work necessary to the operation of Carrier and hence was subject to removal from the scope of the Agreement by action of the Nickel Plate at any time, without violation by Carrier of its Agreement with its employes. By the same reasoning, if the situation were reversed, Carrier would be in violation of the Agreement were it to allocate work of its purchasing department to Nickel Plate employes without negotiation and agreement with its employes.

It follows from what we have said above that the claim of the Employes cannot be sustained.

We have examined the so-called Washington Agreement on coordination and we are of the opinion that, if in fact there has been any violation of its terms in connection with the separation of the Nickel Plate work, the remedy is to follow the procedure set forth in Section 13 thereof and not by application to this Board.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.