

Award No. 6140

Docket No. CL-6048

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

- (a) The Carrier violated and continues to violate the Clerical Agreement, subsequent to January 1, 1945, by failing and refusing to assign at the Huntington, West Virginia, Freight Station, the work of Stowers or Stevedores, Callers or Loaders, Locators, and Coopers to employees holding seniority rights on the Group 3 Transportation Department, Huntington District, seniority roster, and
- (b) That all employees in both Groups 1 and 3 adversely affected by reason of the Carrier's violating the Agreement in the assignment of the Group 3 work to Group 1 employees shall be compensated for any and all loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Huntington, West Virginia, is a city of 86,353 population. At this point the Carrier has a large two-story Freight House, which is 420 feet long and 42 feet wide, and attached thereto is a platform 12 feet wide and 800 feet long. There are then three house tracks beyond it; and, running parallel to the Freight House, there is another platform 15 feet wide and 800 feet long, beyond which are three additional house tracks. The house tracks will accommodate approximately 116 cars, and around 60 to 65 cars of freight per day are unloaded and reloaded at the Freight House.

There were approximately 120 employees in all capacities regularly assigned at the Huntington Freight Station in the latter part of October, 1951. There were approximately 167 employees regularly assigned at the Freight Station on or about January 31, 1945.

There were 22 regularly assigned Check Clerks at the Huntington Freight Station during the last half of October, 1951, regularly performing Group 3 work of Loader throughout the day. During this period there were also assigned 1 Cooper, 8 Stowers, and 35 Truckers.

be required to split hairs and try to determine how much time is spent in tallying and looking at tags on the freight and how much time is spent in moving freight manually until the tally sheet or record book is again picked up."

It will be noted in this case that the Board supports the Carrier's position and your attention is called to that part of the Opinion quoted above in which the Board stated that the classification of Delivery Clerk is essentially clerical, but in the performance of his duties a **Delivery Clerk may manually handle freight** being paid a higher rate of pay than those who are more or less restricted to just the manual handling of freight, such as trucker. This is the situation at Huntington Freight Station where Check Clerks perform primarily clerical work and in the performance of their duties manually handle freight.

The Carrier maintains that Rule 1, Section (a), controls in this dispute. This rule sets out the employees covered by the agreement and classifies employees according to the type of work they perform. It does not reserve any particular work covered by the agreement to any one group or classification exclusively as contended by the employees. The Awards of your Board which have been cited sustain the Carrier in this respect.

Therefore, the Carrier maintains that the claim should be denied because:

1. The Check Clerks at Huntington Freight Station have been locating, assembling and assisting in loading freight at least since January, 1931, and no protest was made concerning such handling for approximately 13½ years.
2. Rule 1, Section (a), is controlling. It does not give to any classification of employees the exclusive right to any particular work covered by the agreement, and does not prohibit an employee in a particular group from performing other work usually performed by other classifications under the agreement.
3. The Awards of your Board sustain the position of the Carrier that employees in any Group or classification can perform a combination of work covered by the agreement, and does not give to any classification of employees the exclusive right to any particular work covered by the agreement.

All evidence introduced in this submission has been submitted to the employees in substance either in conference or by correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This case does not involve any change in work assignments but simply presents a contention that the established practice of requiring check clerks to load or assist in loading freight onto trucks at Huntington Freight Station is a violation of the Agreement. That contention is based upon the theory that loading is work reserved by the Agreement to Group 3 employees (Laborers) and may not be performed by Group 1 employees (Clerical Workers).

Rule 1 (a) defines the three groups of employees covered by the Agreement. Group 3 consists of laborers employed in and around offices, stations, storehouses, warehouses, and so forth. Group 1 consists of employees who regularly devote not less than four hours per day to certain specified clerical duties. Neither that rule nor any other rule prohibits the performance of manual labor by Group 1 employees nor specifically reserves the performance of all manual labor to Group 3 employees. In the absence of such a specified rule, the established practice whereby check clerks loaded or assisted in loading freight they were checking is not a violation of the Agreement. Hence the claim is without merit.

In the Employees' rebuttal brief claim is made that truckers performing loading work are entitled to a higher rate of pay. That claim is not encompassed within the claim as filed and does not appear to have been handled on the property in accordance with the provisions of the Railway Labor Act as amended, so we decline to exercise jurisdiction thereon.

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 the Agreement was not violated.

AWARD

Claim denied in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1953.