

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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:

- (a) That the Management has violated and continues to violate the Clerks' Agreement by requiring Stationmasters, Assistant Stationmasters, Stationmaster's Clerk, and Gatemen at the Main Street Station, Richmond, Virginia, to purchase uniforms, caps, and other equipment in the performance of service for the Carrier, and
- (b) That all such employees be reimbursed for all expenses incurred in the furnishing of uniforms, caps, etc., in the performance of work of Stationmaster, Assistant Stationmaster, Stationmaster's Clerk, and Gateman at the Main Street Station, Richmond, Virginia, subsequent to January 1, 1945.

EMPLOYEES' STATEMENT OF FACTS: On November 16, 1936, an Agreement, identified as No. 6, which had been duly negotiated through conference between representatives of the respective parties, became effective, containing the following rule:

"RULE 57—MACHINES FURNISHED

"Typewriters and other office equipment devices will be furnished by the Railway Company at offices where the Management requires their use."

During the early part of 1944, the Employees served notice on the Carrier for a revision of Agreement No. 6, and on November 21, 1944, signed what was identified as Agreement No. 7, which became effective January 1, 1945, containing Rule 57, Section (a) thereof reading:

"RULE 57—MACHINES, EQUIPMENT AND SUPPLIES FURNISHED

"(a) Wherever and whenever the Management requires an employee to use a typewriter, mechanical devices and/or any other equipment or supplies in the performance of service for the Company, said articles shall be furnished and maintained by the Company without expense to the employees."

be agreeable to bearing the cost of the first uniform (excluding shirt and tie) and bear 50 per cent of the cost of renewal and that the Railway would furnish the caps in all instances. I also stated to Mr. Cart the Railway would be agreeable to granting an increase to the station laborers acting as red caps of 5c per hour, explaining to him that station laborers were already being paid for their services as provided in the Clerks' Agreement, but in view of the contemplated uniform requirements we would be agreeable to the 5c per hour increase in pay.

"Mr. Cart stated that he thought the above would be agreeable but would let me know as soon as practicable as to whether or not the 5c per hour increase would be accepted."

No further answer was made on the part of the clerical employees until on October 28, 1947, the General Chairman, who had by then returned, declined to agree to the proposed arrangements. The red caps were not uniformed, and the proposed 5c per hour increase was not placed in effect. It will be seen that the situation here was in a sense similar to that at Ashland—a new requirement or obligation on the employees was being considered. In the instant case, however, as previously pointed out in this Brief, the employees have always provided their own uniforms as a part of their employment obligation, and the discussion in 1947 with regard to uniforms for red caps should in no wise have any bearing on the intentions of the parties when agreeing to Rule 57 in 1944.

In concluding, the Carrier calls attention again to the evidence that the parties did not agree in the 1944 negotiations leading to adoption of Rule 57 that uniforms were embraced therein. There is, therefore, no proper grounds upon which to adopt the urging of the Employees that Rule 57 should be held as requiring the Carrier to provide at its expense the uniforms worn by the four classifications enumerated in this case. The Board should find, on the other hand, that the evidence is to the effect that the parties did not cover uniforms in negotiating Rule 57 in 1944, and that such matter is subject to proper negotiation through the channels prescribed by the Railway Labor Act.

Data contained in this Brief have been discussed in conference or by correspondence with the Employee Representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The Claim herein is that the Carrier is required by the applicable Agreement to pay for uniforms and caps required to be worn by Stationmasters, Assistant Stationmasters, Stationmaster's Clerk and Gatemen at the Main Street Station, Richmond, Virginia. The claim is controlled by Rule 57 of the January 1, 1945 Agreement, which provides:

"Rule 57—Machines, Equipment and Supplies Furnished.

"(a) Wherever and whenever the Management requires an employee to use a typewriter, mechanical devices and/or any other equipment or supplies in the performance of service for the Company, said articles shall be furnished and maintained by the Company without expense to the employees.

"(b) Wherever and whenever employees are required to use automobiles, motorcycles, bicycles or other transportation in the rendition of service, they will be instructed in writing by the proper officer and the said equipment or transportation will be furnished and maintained by the Company without expense to the employees."

The Employees seem to rely primarily upon the word "equipment" in Paragraph (a) of Rule 57. The Carrier, on the other hand, answers that the word

"equipment" was not used for the purpose or intended by the parties to have the effect of requiring the Carrier to pay the cost and maintenance of uniforms and caps. The Carrier contends that Paragraph (a) refers to typewriters, adding machines, and similar office equipment and supplies customarily used by clerical employees in the conduct of their work. The Carrier further contends that had the words "equipment or supplies" been intended as an all-inclusive term, there would have been no need to provide in Paragraph (b) of the Rule that required vehicles or transportation "will be furnished and maintained by the Company without expense to the employees." That this latter contention is reasonable seems self-evident. Moreover, the Carrier's view regarding the limited scope of the term "equipment" finds strong support in the basic rule of contract interpretations that where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is to be held to embrace only things of the same kind or species as those specifically identified.

The Carrier's position also receives strong support from past practice. The Record amply reveals that for many years prior to January 1, 1945, when Rule 57 became effective in its present form, employees at Main Street Station occupying the positions involved in this case purchased (paid for) and maintained uniforms and caps, of the type and to the extent that such were required, while the Carrier furnished only badge and buttons. But of even much greater significance is the fact that for several years after Rule 57 was adopted in its present form these employees continued to purchase and maintain such uniforms and caps without any assertion or protest that purchase and maintenance of these items was the responsibility of the Carrier. This fact considered, it seems highly unlikely that as of January 1, 1945, the Employees understood and intended the newly reworded Rule 57 to have such broad effect as to require the Carrier to purchase and maintain uniforms and caps.

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 Claim is without merit.

AWARD

Claims (a) and (b) both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of October, 1953.