

Award No. 7285
Docket No. CL-6858

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Baltimore and Ohio Railroad that:

1. Carrier violated the Clerks' Agreement when it abolished the position of Yard Clerk, 75-1-542, at Washington Court House, Ohio, from February 11, 1950 to March 8, 1950 and assigned part of the remaining duties and work out from under the Scope of the Clerks' Agreement to an Operator-Clerk covered by the Telegraphers' Agreement, and

2. That Claimant R. E. Griffith, who occupied position of Yard Clerk 75-1-542, be paid at the rate of the position for all days he was deprived of working same between February 11, 1950 and March 8, 1950, inclusive.

EMPLOYEES' STATEMENT OF FACTS: This dispute arises out of the Carrier's discontinuance of a position of Yard Clerk, No. 75-1-542, between February 10, 1950 and March 8, 1950. The locale of the dispute was Washington Court House, Ohio. The position when in existence had the assigned hours between 3:00 P.M. and 12:00 Midnight with one hour for lunch, with Sunday and Monday as rest days. The duties were to sell tickets for Trains 233 and 238, make reports on all tickets, local and interline, assist other forces in the handling of U. S. Mail, list yard check for the night yard crew, bill livestock on Trains 97 and 104 and make and deliver interchange reports on cars to the DT&I Railroad. During the period of time Position 75-1-542 was abolished P. R. Sperry, First Trick Operator, tour of duty 7:00 A.M. to 3:00 P.M., worked one to two hours overtime daily selling tickets, making ticket reports and interchange reports, which duties were attached to the position which had been abolished. On his rest days which were Saturday and Sunday, he received a call to perform the same work. The position of First Trick Operator is entirely outside the Scope of the Clerks' Agreement.

Under date of June 5, 1950, a Memorandum of Conference was drawn up at Newark, Ohio, with Mr. A. S. Waller, Superintendent, representing the Management and Mr. H. E. Thompson, Division Chairman, representing the Employees. We incorporate this document as Employees' Exhibit No. 1.

Prior to February 10, 1950, the following positions were in existence at Washington Court House, Ohio:

as 15 minutes of work that comes under the Telegraphers' Agreement. Here then is a flat acceptance of the doctrine of "ebb and flow" (and in a much broader and more complete sense than anything comprehended by what happened here); and from that acceptance necessarily pursues recognition on the part of the Clerks' Organization that nothing in Rule 1(c) can or does support the claim.

(F) **Carrier's Summary**

In summary the Carrier asserts this claim is without validity on the following specific premises:

(1) The second position of Yard Clerk at Washington Court House, Ohio was fundamentally one to assist the positions already established at that location.

(2) During the year 1950 there was a substantial and material reduction in the volume of work handled at Washington Court House, for reason of a coal strike.

(3) The work previously performed by the second Clerk accordingly substantially reduced and the position was abolished.

(4) Following the abolishment what little work remained "flowed" back to the positions already established at that location.

(5) The principle of "ebb and flow" is expressly implied in the working contract.

(6) There is substantial evidence that both parties are in agreement as to the application of this principle under the operation of the working contract.

(7) As soon as business increased with an end to the coal strike this particular position was restored.

Based on all that has been said hereinabove the Carrier submits the claim made here at parts 1 and 2 is completely without merit. The Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

In accordance with the requirements contained in this Division's Circular No. 1, issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to, or is known by, the other party to this dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The subject matter of this claim has been before this Division of the Board on several previous occasions, involving the same parties and Agreement.

We deem that no useful purpose would be served by going into detail on the factual situation presented here for consideration on an interpretation of the rules in question. It is sufficient to say that the following Awards have gone into an interpretation of the rules in question as applied to similar facts at considerable length. See Awards 3583, 3906, 4445, 4045, 5436, 6527, 6528, 6529, and recent Awards 7221 and 7222. We reaffirm the findings in those Awards.

FINDINGS: The Third Division of the Adjustment Board, after giving 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

The Carrier violated the Agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of March, 1956.