

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(a) Section 2 of the Agreement, effective December 1, 1948, attached to Mediation Agreement in Case No. A-2996, but not made a part thereof, both signed November 18, 1948, copies of which are attached as Employees' Exhibits "A" and "B", respectively, did not curtail or in any way modify the rights and equities of employe C. C. Hasecoaster to such positions as were within the sphere of the Muncie, Indiana, joint terminal roster, when the joint operation of Freight Office, Warehouse, and Yard facilities at Muncie, Indiana, was terminated, effective December 1, 1948, pursuant to that Agreement.

(b) Employe C. C. Hasecoaster, whose seniority date and rights on the joint terminal seniority roster prior to December 1, 1948, was as of July 13, 1923, at which time the positions listed below were within the sphere of such joint terminal roster, shall now be restored to the same status he enjoyed immediately prior to December 1, 1948, insofar as his rights and equities to such positions are concerned, but without any rights to retroactive adjustment in wages. That status to continue so long as he remains in the service of the New York, Chicago and St. Louis Railroad Company and is assigned to one of such positions and his rights are not otherwise adversely affected by the operation of Agreement Rules, extent between the parties.

Positions within the sphere of the joint terminal roster, name of incumbent, rank and seniority date as of November 30, 1948:

POSITION	INCUMBENT	DATE
Chief Clerk	H. I. Sanders	7/5/1918
Yard Clerk	L. H. Buettner	12/24/1920
Demurrage Clerk	W. D. Day	3/7/1922
Cashier	C. C. Hasecoaster	7/13/1923
Chief Yard Clerk	J. Murray	8/1/1923
Clerk	J. D. Winans	3/22/1924
R&D Clerk	W. H. Poe	1/1/1936

POSITION	INCUMBENT	DATE
Checker	N. Stump	1/1/1936
Checker	L. D. Smith	1/1/1936
Checker	O. Ramey	1/1/1936
Yard Clerk	L. D. Brown	6/4/39
General Clerk	W. E. Combs	6/10/1940
Warehouse Clerk	H. H. Parker	1/23/1941
Asst. Foreman	W. E. Thornton	2/18/1941
Yard Clerk	M. McDermott	3/19/1941
General Clerk	F. P. Murray	4/14/1941
Yard Clerk	L. E. Ramsey	7/24/1941
Yard Clerk	N. J. Cook	6/5/1942
Yard Clerk	C. D. Gray	2/22/1943
Checker	O. C. Hoechst	4/9/1943
Checker	O. Johnson	4/21/1944
Yard Clerk	L. E. Chamness	7/5/1944
Checker	G. Poe	5/28/1945
Bill Clerk	E. J. Maloney	11/17/1945
Yard Clerk	R. B. Paden	4/8/1947
Checker	A. Lacey	4/17/1947
Yard Clerk	R. D. McMasters	6/23/1947
*Warehouse Foreman	C. E. Russey	
**Steno-Clerk	C. R. McKinney	

*Partially excepted position. No Group 1 seniority shown.

**Not shown on seniority roster.

EMPLOYEES' STATEMENT OF FACTS: Pursuant to Memorandum Agreement, dated April 25, 1933, copy of which is attached as Employees' Exhibit No. 1, C. C. Hasecoster, then Warehouse Foreman, and three other clerical employees of the Chesapeake and Ohio Railway Company (hereinafter referred to as the C&O), were transferred to the New York, Chicago and St. Louis Railroad Company (hereinafter referred to as the Nickel Plate), in a consolidation of Freight Office, Warehouse and Yard Operations made by the two Carriers at Muncie, Indiana, effective May 1, 1933, and in accordance with the provisions of that agreement were accorded their accumulated clerical seniority dates on the Muncie joint terminal roster and a clerical date of May 1, 1933, on the New Castle Division seniority roster of the Nickel Plate Railroad.

The clerical employees transferred with Hasecoster from the C&O to the Nickel Plate in 1933 are not here involved. As of May 1, 1933, Mr. Hasecoster was assigned to the position of General Clerk and retained that position until January of 1939 when with his accumulated date of July 13, 1923, on the Muncie joint terminal roster, he bid for and was assigned to the position of Cashier, which he still occupied December 1, 1948, when the joint operation was terminated.

The C&O on April 29, 1948, served notice on the Nickel Plate of its desire to terminate the joint terminal arrangement at Muncie, effective as of midnight November 30, 1948. On July 31, 1948, the two carriers served notice on the General Chairmen of the Clerks Organization on their respective roads of their desire to make the necessary changes in the arrangement covered by the Memorandum of Agreement, dated April 25, 1933, effective May 1, 1933, (Employees' Exhibit No. 1), and change Section 6 of Mediation Agreement, Case A-225, dated May 20, 1936, by eliminating that part referring to Muncie, Indiana, the last referred to agreement having no bearing in this case. The notice served on the two General Chairmen under date of July 31, 1948, reads as follows:

"The agreement between the Chesapeake and Ohio Railway Company and The New York, Chicago and St. Louis Railroad Company covering the operation of the joint terminal facilities at

handled on the property and is not properly before this Board; that in the event the Board takes jurisdiction to hear the case, all employees who will be adversely affected by a sustaining award, should be notified of the hearing; and without waiving those objections, there is no merit in the claim made and it should be denied.

Inasmuch as the Carrier has shown that the present claim is not the same claim handled on the property and has not been handled in the usual manner as required by the Railway Labor Act, does not yet know the effect or mechanics of establishing a "sphere of the joint terminal roster" and as it totally rejects the ex parte listing in the Employee's Statement of Claim of "Positions within sphere of the joint terminal roster, name of incumbent, rank and seniority date as of November 30, 1948," as an arbitrary list without foundation in fact or agreement, it is not in a position to certify that "all data submitted in support of Carrier's position have been presented to the other party and made a part of this particular question." If by the other party, the representative of the Brotherhood signatory to the current working agreement (General Chairman of Nickel Plate System Committee) is meant, then all data submitted in support of Carrier's position have been submitted to the other party, the parties are in agreement and there is no dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 1, 1933, the C. & O. Railroad and the Nickel Plate Railroad maintained separate terminal facilities at Muncie, Indiana. Clerical employees employed at the C. & O. Muncie terminal facilities had seniority on the Chicago Division of the C. & O., along with other employees located at various points on that Division. Nickel Plate clerical employees working in the Nickel Plate terminal facilities at Muncie had seniority on the New Castle Division of the Nickel Plate along with Nickel Plate employees located at other points on the New Castle Division.

Effective May 1, 1933 the Carriers consolidated their separate terminal facilities at Muncie. A Memorandum of Agreement dated April 25, 1933 was signed by representatives of the two railroads and of the clerical employees of the two railroads setting forth the rights of these employees in the establishment of the joint terminal. This Memorandum provided as follows:

"(1) It is agreed that four C. & O. clerks from the C. & O. roster at Muncie, who are displaced due to the establishing of the joint terminal at Muncie, Indiana, on May 1, 1933, who desire, will be assigned to positions in the joint terminal at the time the joint terminal is established.

(2) C. & O. employees who are assigned to positions in the joint terminal will be placed and accumulate seniority on Muncie, Indiana joint terminal roster, in accordance with their seniority dating on their home road roster.

(3) C. & O. clerks will be permitted to exercise their home road seniority only to joint terminal positions, C. & O. clerks entering the joint terminal will accumulate seniority to positions on the New Castle division seniority roster, other than joint terminal positions, from the date they enter the joint agency, in accordance with the rules of the Nickel Plate agreement.

(4) After the consolidation is effective, any vacancies occurring will be advertised in accordance with the Nickel Plate schedule.

(5) Where it is desired to readjust rates, conferences as to rates will be held with the Brotherhood Nickel Plate System Board representatives, as it is understood that the Nickel Plate agreement covers, and that all employees in the joint terminal come under the rules of the Nickel Plate agreement.

(6) Employees brought in the Nickel Plate joint terminal from the C. & O. shall not be displaced by Nickel Plate clerks, other than joint terminal clerks, for a period of six months. After this time limit of six months expires, rules of the Nickel Plate Road agreement will apply."

Claimant, then a warehouse foreman on the C. & O., transferred effective May 1, 1933 to the position of general clerk in the joint terminal. In accordance with the Memorandum of Agreement, Claimant was assigned a seniority date of 7-13-23 on the joint terminal roster, which was his original seniority date on the C. & O. He was also assigned a seniority date of 5-1-33 on the New Castle Division of the Nickel Plate. In January, 1939, Claimant bid for and was assigned to the position of cashier on the Muncie joint terminal roster. He occupied this position until February 1, 1950.

The Carriers terminated their joint terminal arrangement at Muncie effective as of midnight, November 30, 1948 and returned to separate operations at that point. Prior to that time, on November 18, 1948, the two Carriers and the representatives of their clerical employees entered into an agreement defining the rights of clerical employees in connection with the discontinuance of the joint terminal. The pertinent provisions of this agreement are as follows:

"1. It is agreed that effective December 1, 1948, the Chesapeake and Ohio Railway Company will resume operation in its own freight Office, Warehouse, and Yard facilities at Muncie, Indiana, and that the previously operated joint facilities of the Chesapeake and Ohio, (hereinafter referred to as the C. & O.), and the New York, Chicago and St. Louis Railroad, (hereinafter referred to as the Nickel Plate), will be separated and the joint operation discontinued as of close of business November 30, 1948, all C. & O. work thereafter to be performed in the C. & O. facilities under and in accordance with the terms of C. & O. Clerical Agreement No. 7, Memoranda Agreements in connection therewith, and this Agreement.

2. It is further agreed that Memorandum Agreement effective May 1, 1933 made between the C. & O. and Nickel Plate Managements, the Chesapeake and Ohio Clerks Association, and the Nickel Plate System Board of Adjustment is cancelled in its entirety.

* * * * *

3. It is further agreed that not to exceed four (4) Nickel Plate Clerks from the Group I Nickel Plate Seniority roster at Muncie, Indiana, (New Castle Division) who are to be displaced directly or as a result of a separation of the joint terminal facilities at Muncie, Indiana, at close of business November 30, 1948, will if they desire to go into the C. & O. operation, be assigned to C. & O. positions on or before December 1, 1948 as follows: . . ."

Four Nickel Plate employees, not including Claimant, transferred to C. & O. positions under this Memorandum. As of December 1, 1948 there was no longer a joint terminal and the joint terminal roster of the Nickel Plate at Muncie was discontinued. After that date, Claimant was carried only on the New Castle Division roster with a seniority date of 5-1-33. Claimant was displaced from his position of cashier effective February 1, 1950 by an employee who held seniority date of 3-22-24 on the New Castle Division roster.

The claim is that Claimant is entitled to his original C. & O. seniority date of 7-13-23 as to all positions "within the sphere" of the joint terminal roster and that his seniority date as to these positions be restored to 7-13-23.

The record shows that after the signing of the November, 1948 Memorandum, Claimant, the General Chairman of the Nickel Plate and the mem-

bership of the Clerks' Local Lodge at Muncie all interpreted the Memorandum—specifically Section 2 thereof—to mean that Claimant's only remaining seniority date on the Nickel Plate was May 1, 1933; and all of them took the position that some arrangements should be made to allow Claimant to return to the service of the C. & O. with his original C. & O. seniority date. However the Vice-Grand President of the Clerks, who had entered into the November Memorandum on behalf of the employees of the Nickel Plate due to the illness of the Nickel Plate General Chairman, and the Grand President of the Clerks disagreed with this view and took the position which is set forth in the claim. The claim was filed by the Grand President.

Carrier contends, based upon the above facts, that no dispute exists between the employees or their representative on the Nickel Plate and the Nickel Plate management, and that therefore the claim should be dismissed. A number of awards are cited to support this contention including Award 7061 of this Division. In that Award, and in other awards cited by Carrier, the General Chairmen had entered into settlements with the Carriers of claims filed on the respective properties. The claims were then brought to the Board by the National Organizations involved, which disagreed with the settlements made by their General Chairmen. In those cases, it was held that the claims should be dismissed because the General Chairmen had full authority to make such settlements. Here, however, although it does appear that the General Chairman agreed with the Carrier's position in the dispute, he did not purport to reach any settlement with the Carrier after the claim was filed by the aggrieved employee and before it was filed with this Board by the Grand President. We therefore do not consider the awards cited to be controlling and we will not dismiss the claim on this basis, but will consider it on the merits.

Considered on the merits, we feel that the claim must be denied. Claimant's right to carry his C. & O. seniority over to the Nickel Plate was based entirely on the Memorandum Agreement of May, 1933. Such right was clearly limited by that Agreement to the joint terminal positions. The basis for allowing Claimant to carry his C. & O. seniority over to the Nickel Plate joint terminal positions was that the work of the joint terminal was as much C. & O. work as Nickel Plate work, even though the employees were to be covered by the Nickel Plate Agreement.

The Memorandum of 1948 specifically cancelled the May 1, 1933 Memorandum in its entirety. On December 1, 1948 the joint terminal ceased to exist. Under the terms of the 1948 Memorandum, no provision was made for Claimant to return to the employment of the C. & O.; instead he remained on his same position with the Nickel Plate. However, this position was no longer a joint terminal position since there was no longer any joint terminal. Neither his position nor any other Nickel Plate terminal position any longer involved any work for the C. & O. The original reason for his retention of his C. & O. seniority as a Nickel Plate employee no longer existed and the contractual basis upon which he retained it—the May, 1933 Memorandum—was specifically cancelled by the November, 1948 Memorandum.

Under the terms of these two Memorandums, it is clear that the only seniority date available to Claimant on his now exclusively Nickel Plate position is the date upon which he began to work as a Nickel Plate employee—May 1, 1933. It is asserted by the three signatories to the November, 1948 Memorandum other than the Nickel Plate, that this result was not intended by that Agreement. However, their interpretation is not reflected in the language of the Agreement. In our view, as in the original view of the Nickel Plate, the Nickel Plate General Chairman, the membership of the Muncie Local Lodge, and the Claimant himself, the clear effect of Section 2 of the 1948 Memorandum is to deprive Claimant of any seniority on the Nickel Plate prior to May 1, 1933.

If the parties are agreed that an injustice has been done to Claimant, they should be able to negotiate an equitable adjustment of his status.

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 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 Agreement was not violated, in accordance with the Opinion.

AWARD

Claim denied, in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1956.