

Award No. 8378
Docket No. CL-8165

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, 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 Carrier violated and continues to violate the terms of Clerks Agreement No. 7 when on June 22, 1954, it abolished position of Freight and Ticket Clerk, rate \$13.89 per day, hours 7:30 a.m. to 4:30 p.m., and thereafter performed the work by assigning it to others not covered by the Agreement, and

(b) That the senior furloughed employee be paid a pro-rata day's pay at the regular rate established for position of Freight and Ticket Clerk here involved for each day the work involved was performed by persons other than employees entitled to perform said work under and within the terms of Clerks Agreement No. 7. The claim contemplates that on any day it should develop that there was no furloughed employee, regularly assigned employees to be designated by the Organization be additionally compensated by one pro-rata day's pay. Claim to continue until all corrections are made.

EMPLOYEES' STATEMENT OF FACTS: In 1945 the Employees filed Claim with the Carrier's Superintendent at Clifton Forge, Virginia, that the position of Station Laborer covered by the Clerks Agreement at Goshen, Virginia, be properly classified and rated as a clerical position, that employees who had been adversely affected by the Carrier's failure to do so should be compensated to the extent of such loss.

The matter was the subject of much correspondence and numerous conferences between the Employees and Carrier's officers, culminating in an agreement on January 26, 1950, between the Carrier's Assistant to Vice-President—Personnel and the General Chairman to abolish the Station La-

OPINION OF BOARD: The action of the Carrier complained of herein was the abolishment of the position of Freight and Ticket Clerk at Carrier's station, Goshen, Virginia and turning over such duties to an Agent covered by the agreement between the Carrier and The Order of Railroad Telegraphers. If, the claim was allowed it would mean restoring the duties to the employes represented by this Organization and removing those duties from the Agent.

Under the latest ruling of the Federal Courts passing upon the question the Telegraphers are "involved" in this dispute within the meaning of Section 3, First (j) of the Railway Labor Act which reads as follows:

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them."

The case is similar on its facts to the case of The Order of Railroad Telegraphers vs. New Orleans, Texas and Mexico Railway Co., 29F (2nd) 59, Cert. denied 76 Sup. Ct. 548, with the exception that in this case the organizations are in reverse position and a different carrier is involved. The Circuit Court of Appeals for the Eighth Circuit upheld the Opinion of the trial court which held:

"The Award and Order of the National Railroad Adjustment Board 4734 is illegal and void in that it was rendered by said Board without giving members of the BRS notice and without the members of BRS having an opportunity in the hearing to be heard before the National Railroad Adjustment Board."

The ruling in the aforesaid case is the last pronouncement of the law applicable to matters of this kind. The same principle of law is applicable herein.

The Railway Labor Act (U. S. Code, title 45, Chapter 8) provides under "General Purposes" the following:

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employes or any denial, as a condition of employment or otherwise, of the right of employes to join a labor organization; (3) to provide for the complete independence of carriers and of employes in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Under "General Duties" the first of such are:

"First. It shall be the duty of all carriers, their officers, agents, and employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employes thereof."

It is not the purpose of this Board nor is it in the contemplation of the Railway Labor Act to render awards which the courts consider "illegal and void" as no dispute can be finally settled in that way.

For the aforesaid reasons we think it would be improper to consider the merits of the claim until all the parties involved have received notice as required by the law.

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 any decision on the merits be deferred.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, the Brotherhood of Railway Clerks, the Carrier, and The Order of Railroad Telegraphers, as contemplated by Section 3 First (j), of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.