

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Paul N. Guthrie, Referee**

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**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; Mediation Agreement, Case No. A-3277, dated December 14, 1949, disposing by Agreement effective January 1, 1950; and Memorandum Agreement effective January 1, 1950, signed December 14, 1949, when on or about January 1, 1950, it removed clerical work from the scope and operation of above specified Agreements and did thereupon assign it to employees without the Scope of said Agreements to the detriment thereof and in a manner to cause loss to the clerical employees for whom the Agreements were consummated, and

(b) That Mr. L. G. Huth, Cashier; Mr. A. B. Hollenbaugh, Freight & Ticket Clerk, be allowed pay for the equivalent amount of the time the Agent and others outside the scope of Clerks' Agreement devoted to the performance of clerical work referred to in this claim in addition to all other earnings beginning January 1, 1950 and continuing until all corrections have been made.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to July 1, 1933, the Chesapeake and Ohio Railway Company (hereinafter referred to as the C&O) maintained its Passenger Station, Freight Office, Warehouse, and Yard facilities at Fostoria, Ohio, separate and apart from similar facilities operated by the New York, Chicago and St. Louis Railroad Company (hereinafter referred to as the Nickel Plate) which also served the area.

Effective July 1, 1933, as result of a consolidation agreement between the parties (Employees' Exhibit "1"), the clerical employees of the C&O together

perform necessary station work just as such work is being performed by the Agent-Operator at Fostoria, Ohio, under present conditions, and that there has been no violation of the Clerks' Agreement in any respect. The Board should, therefore, deny the claim in the instant case in its entirety.

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All data contained in this submission have been discussed in conference or by correspondence with the Employee representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This docket was previously before the Division. Award No. 8022 was made on July 25, 1957 with the present Referee sitting as a member of the Division. The award deferred decision on the merits of the claim pending notice to the Order of Railroad Telegraphers as an "involved" party. Subsequent to the issuance of Award 8022, notice was duly given, and the claim now comes before the Division for decision on the merits.

This dispute grows out of adjustments made in the clerical force at Fostoria, Ohio following a deconsolidation agreement entered into on or about December 14, 1949.

The record shows that the alleged violations of the agreement have been subsequently corrected by the Carrier. Therefore, the question remaining goes to the claim for compensation during the period of alleged violation.

Petitioner contends that the Carrier violated Rule 1(b), a part of the Shop Rule, and the Mediation Agreement dated December 14, 1949, and Memorandum of Agreement signed December 14, 1949.

The respondent carrier contends that its actions were in accordance with the controlling agreements, and that there was no violation as alleged.

A rather voluminous record is before the Division on this matter. A large part of the discussion has gone to the question of whether or not the Carrier violated the Scope Rule, particularly part (b) thereof. However, a review of the record indicates that the Mediation Agreement of December 14, 1949, and the Memorandum of Agreement of December 14, 1949, are of special importance. Much of the discussion in the record goes to the matter of whether the word "position" in 1(b) means the same or substantially the same as "work". If this were a case hinging entirely upon this matter, the problem of "Position" vs. "Work" would be basic. However, we have here the two other special agreements cited above, which were designed to deal with this specific deconsolidation at Fostoria. Therefore, it is quite possible to decide this case without resolving the "position" vs. "work" controversy as a general proposition under the rules. In the special agreements cited, which were negotiated to deal with this Fostoria problem, the word "work" is used. In view of the provisions of the cited Mediation Agreement and the Memorandum of Agreement of the same date, the claim has merit and should be sustained. There seems to be no doubt that these two special agreements reserved the particular work involved to clerks.

**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 Carrier violated the Agreement.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: A. Ivan Tummon**  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.