

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, 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 that:

(a) The Carrier violated the Agreement when, at Huntington, West Virginia, on August 29, 1958, it discharged Mrs. Ethel Dudding from service.

(b) Mrs. Ethel Dudding shall now be restored to service with all rights unimpaired and compensated for all wage loss sustained on August 29, 1958 and each date thereafter until returned to service.

OPINION OF BOARD: Petitioner seeks restoration of claimant to service and pay for time lost on the ground that she was dismissed from service without investigation.

Prior to dismissal claimant was an elevator operator in the Chafin Building in Huntington, West Virginia. This building has been purchased and was being operated by the Chesapeake Realty Development Corporation. Claimant was carried on its payrolls, was paid by it and was dismissed by it. That corporation appears to have been regularly incorporated under the laws of the State of Indiana and to have had entirely separate corporate identity from Carrier although its officers and directors were all officers or directors of Carrier and it was financed by Carrier and organized for the avowed purpose of engaging in the purchase and development of industrial property along its line of road.

The Chafin Building was an office building. Carrier was one of eight tenants and then occupied some forty per cent of its rented space for office use of certain departments, for which it paid the same rate of rental as other tenants.

Admittedly claimant was not an employee of Carrier but of the Chesapeake Realty Development Corporation. Claim is made against Carrier on the ground that claimant's employer is owned and controlled by it. Carrier denies liability. This Division may not determine whether claimant's employer, the Realty Corporation, is a carrier under the broad definition of Section 1, First Title I of the Railway Act since no claim is here filed against it, and we may not determine whether, as a matter of law, Carrier's employe contracts cover the employes of its subsidiary corporation, as that question has already been submitted by the Organization to the National Mediation Board for determination and is outside our jurisdiction. Therefore the claim must be dismissed.

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 the Board is without jurisdiction.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.