

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Agreement between the parties when, at Atlanta, Georgia it used Mr. C. C. Vaughn, a member of the Telegraphers Class or Craft, to perform "extra" work on the position of "Cotton, Export and Mail Clerk's position, which is fully covered by the Agreement, on August 2, 5, 16, 17, 18, 19 and 20, 1954.

(b) Mr. J. M. Sey, senior Extra Clerk, shall now be compensated at proper pro rata rate for each of the days the Carrier so improperly used Mr. Vaughn, as a penalty for the violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: On August 1, 1954, Mr. C. C. Vaughn, cut-off or furloughed clerk accepted employment and began work as a Telegrapher. He worked as a Telegrapher during the period August 1, through August 26, 1954 on the following dates, August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 23 and 24. During the same period Mr. Vaughn worked the position of "Cotton, Export and Mail Clerk" as follows: August 2, 5, 16, 17, 18, 19 and 20, 1954. Claim was filed on January 13, 1955. Correspondence in connection with the claim is attached hereto and identified as Employees' Exhibits "A" through "L".

POSITION OF EMPLOYES: There is in effect an Agreement between the parties bearing effective date of March 1, 1941 (Except for rules revised effective September 1, 1949, pursuant to Agreement of March 19, 1949, 40 Hour Week Agreement). The aforesaid Agreement is on file with your Division and is by reference made a part of this Submission. Certain Rules, or portions thereof will be quoted for ready reference and in support of this Claim:

transit point and amount applicable beyond transit point; also determine whether all portions of shipments are subject to transit privileges. (This latter feature of the cotton export and mail clerk position requires knowledge of freight tariffs in order to secure proper rates to figure proper extensions and waybills.)

It is our position that Claimant Sey was not qualified to perform any of the duties pertaining to rating, figuring extensions or preparing credit slips on transit shipments. It is true that on certain occasions Claimant Sey has been used on this job. However, on such occasions it was only a token filling, as all he did was to mail waybills, other clerks performing the rating and billing. Agent Norris checked the transit files for two years prior to August 1954, and could not find a single waybill prepared by Claimant Sey, but did find a number which had been prepared by Mr. Vaughn.

To sum up, Mr. Vaughn was senior clerk on Clerks' extra board. He was ready and available for the job, was competent to fill same and under the rules it was incumbent on carrier to use him. He had relinquished no rights as a clerk and had we not used him he would have had a legitimate claim for a run-around. The claim is without merit and we respectfully request it be declined.

All data contained herein has been made available to Petitioner

(Exhibits not reproduced.)

OPINION OF BOARD: Extra Clerk Vaughn held more than a year's seniority as clerk; not enough to hold a regular assignment but enough to protect work on the active extra board. He was called from the extra board to perform extra clerical work on several days between August 1 and August 26, 1954. Clerk Vaughn was also a qualified telegraph operator and in the absence of any other available telegrapher he was used to work as telegrapher on August 1, 1954, and several subsequent days without conflicting with any calls for clerical work until August 26 when he accepted a regular assignment as telegrapher. He was not used thereafter for clerical work. Claim is made here in behalf of the next senior available clerk for pay for each of the days on which Vaughn was called between August 1 and August 26 on the ground that he had lost his seniority under the Clerks' Agreement when he first accepted extra work as telegrapher.

No specific rule is cited supporting this contention. Reliance is placed on implication from other rules. In particular petitioner cites Rule 4(d) providing:

"Employees voluntarily leaving the service will forfeit all seniority and, if they re-enter, shall be considered as new employees."

However Clerk Vaughn neither left the service of the carrier nor his work as clerk until August 26, but was available for every call from the extra board. Even had he not been available the agreement does not provide for loss of seniority but that he will be deprived of right to call on another assignment within twenty-four hours, Rule 20(c) 2. The Agreement being at best uncertain in application to this claim, we should look to practice, and carrier asserts without contradiction that on this property it has always been the practice for extra clerks to hold jobs elsewhere and that carrier had no objection to this practice so long as these extra clerks respond to extra work, when called.

Vaughn's acceptance of temporary work outside the Clerks' Agreement, whether from carrier or in outside employment, which did not interfere with his calls from the extra board did not constitute leaving the service nor an election to transfer to the other employment.

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 Employee involved in this dispute were respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Agreement has not been violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.