

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 on May 17, 1952 and thereafter at Walbridge, Ohio, it employed Mr. Merle W. Baker, a school teacher, to perform "extra" clerical work, and

b. Claimants Mr. R. L. Isbell, Mr. A. C. Price, and other regular employes denied work opportunities by the Carrier's action in "a" be compensated in the order of their seniority and availability, at proper rate of time and one-half their own rates of pay for all time worked on and after May 17, 1952, by Mr. Merle W. Baker.

EMPLOYES' STATEMENT OF FACTS: In 1950, 1951, 1952 and subsequent years the Carrier employed, for the period between closing of schools in the Spring and the opening of schools in Autumn, one Mr. Merle W. Baker, a school teacher regularly employed as such by Ross Township. During most summers Mr. Baker filled vacancies as an "extra" clerk, making no effort to acquire a seniority status, although vacancies existed to which he might have been assigned and thus acquired seniority.

Claim was filed on June 26, 1952, and appealed in the regular manner up to and including the highest officer designated by the Carrier to receive appeals. Conference was held on April 17, 1953. The Carrier refused to allow the claim with the exception of two (2) days at proper rate of time and one-half.

Correspondence in connection with the claim is attached hereto and identified as Employes' Exhibits "A" to "F," inclusive.

POSITION OF EMPLOYES: There is in effect an agreement between the parties known as Agreement No. 7, bearing effective date of January 1, 1945, supplemented and amended effective September 1, 1949, and sub-

as there is no question with regard to this in the instant case, this section may likewise be passed over.

General Discussion

The foregoing completes discussion of the rule provisions step by step, and the Carrier submits that it has shown conclusively that at no point has there been failure in this case to meet the requirements of the rule.

The position of the Employes implies a general prohibition against the employment of school teachers. There is neither provision nor implication of this sort in the governing rules.

Conclusions

The Carrier's evidence is complete in all respects that there has been no violation of the Clerks' Agreement in the instant case, and the claim should be denied in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On May 17, 1952, M. W. Baker was employed by the Carrier to work as an extra clerk. Baker held a contract with the Ross Township Local Board of Education, as a school teacher. His contract with the School Board did not terminate until May 24, 1952. Baker therefore was employed and actually working for the School Board from May 17, 1952 through May 24, 1952. Under Rule 12 which states "that persons holding regular positions elsewhere will not be employed to do work covered by the Clerks' agreement" the Carrier could not employ Baker on May 17, 1952. The claim for May 17, 1952 and May 18, 1952 will be allowed since Baker worked as an extra clerk on those days.

Baker had no regular employment from May 25, 1952 and held himself available, to be called every day to protect all extra clerical work that he was qualified to perform. Therefore, that part of the claim dealing with the time from May 25, 1952 through September 2, 1952 will be denied. The principles set forth above will apply in subsequent years.

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 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 Carrier violated the Clerks Agreement on May 17 and 18, 1952. The Carrier did not violate the Clerks Agreement from May 25, 1952 through September 2, 1952.

AWARD

Claim sustained for May 17 and 18, 1952. Claim denied from May 25 through September 2, 1952 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 23rd day of June, 1960.