

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

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

(a) the carrier violated the current clerks agreement when on November 27, 1957, it allowed extra clerk C. R. Swenson to work 7 A.M. - 3 P.M. vice D. Goldstein, Port Covington Yard Office and that —

(b) D. Schoeberlein, extra clerk be paid 8 hours straight time of yard clerk rate, what he would have earned had violation not taken place, and that —

(c) all other employees who have suffered monetary loss by virtue of this violation shall be fully compensated (such information to be developed by a check of the company's records).

EMPLOYEES' STATEMENT OF FACTS: On or about November 21, 1957, Mr. C. R. Swenson was hired as an extra clerk, Greater Baltimore area. On Sunday, November 24, 1957, the five (5) extra clerks on list, other than those on "hold-downs", had less than an average of two (2) days per week. On the week ending December 1, 1957, the six (6) extra clerks on list had an average of less than two (2) days.

Assistant Superintendent was approached by the Brotherhood's local chairman and advised that Mr. Swenson was in violation of written agreement of a seven (7) man extra list for the Greater Baltimore area, but extra clerk C. R. Swenson was allowed to stay on list and performing duties (as indicated above) as the eighth (8th) extra board employee.

Extra Clerk, C. R. Swenson, was removed after claim entered.

POSITION OF EMPLOYES: There is in effect an Agreement between the parties bearing effective date of January 1, 1948, in which a rule numbered -22- appears and a Memorandum of Agreement dated July 25, 1956, attached hereto and hereinafter referred to as Exhibit "A".

This claim involves mainly whether or not the Carrier has violated the understanding as contained in Exhibit "A" when it placed employee

OPINION OF BOARD: There is no dispute between the parties concerning the facts in this case. The record shows that, in conformity with Rule 22 (a) of the applicable agreement the parties mutually agreed to establish an extra list at Baltimore Terminal, and that, under date of July 25, 1956, the parties further agreed as follows:

“The extra list at Baltimore Terminal shall be maintained at seven (7) positions until changed by mutual agreement.”

The record also shows that C. R. Swenson was hired as an extra clerk on November 21, 1957, by reason of employees on the extra list marking off account sickness or injury, and that, on the claim date, November 27, 1957, the extra list did not exceed the seven positions mutually agreed to, excluding employees marked off and unavailable for service.

In these circumstances, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.