

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19824
Docket Number CL-19814

John H. Dorsey, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7118)
that:

(a) The Carrier violated and continues to violate the Scope Rule and others of the Clerks' Agreement each work day when it permits **employees** of the Railway Perishable Inspection Agency to perform certain loss and damage claims and inspection work previously assigned to and performed by the position of Chief Claim Clerk, A-47, rate \$29.74 per **day, in** the Office of General Agent.

(b) The Carrier shall now be required to compensate the incumbent of position A-47 for four hours at the pro rata **rate** of \$29.74 per day for each day retroactive 60 days from the date of this claim; and to continue each day until the work in question is properly returned to the Chief Claim Clerk **and/or** it is otherwise agreed.

OPINION OF BOARD: Prior to September 1, 1970, cars consigned to Richmond Food stores, **Inc.**, herein called **Food Stores**, were billed to Richmond and arrived at Carrier's 17th Street Yard within **the** city limits of Richmond. Upon arrival at that point they were inspected: (1) for damages to hard goods by Carrier's Chief Claims Clerk -- Position A-47 -- assigned in the Office of General Agent, Richmond; and (2) for damages of perishable shipments by The Railroad Perishable Inspection Agency (**RPIA**). After the inspections the cars were switched and interchanged with the Seaboard Coastline for delivery to Food Stores located at Hermitage Road, Richmond. Hard good cars billed to Richmond by Carrier for all consignees -- not only Food **Stores** -- were likewise inspected; and, insofar as the record shows continue to be inspected at that point by the occupant of Position A-47.

Effective September 1, 1970, Food Stores moved its facility to **Ellerson**, Virginia. Cars assigned to Food Stores were thereafter billed to **Ellerson** over Carrier's Piedmont Subdivision and there was no interchange with any other railroad. At Ellerson the cars carrying both hard goods and perishables, consigned to Food Stores, were inspected by RPIA.

It is the contention of Petitioner that the work of inspection of cars of hard goods consigned to Food Stores at Richmond having been assigned to the Chief Claims Clerk at that point, the right to the performance of such work at Ellerson was contractually vested in Clerks, particularly the Chief Claims Clerk, Position A-47.

This is a Scope Rule case, Rule 1 of the Agreement, Section (a) of the Rule is general in nature and inter alia includes "Chief Clerks" as **positions** covered by the Agreement; but, without defining the work of the positions reserved to Clerks. Section (b) of the Rule reads:

"(b) Positions or work within the scope of this Agreement belong to **employees** herein covered and nothing in this, Agreement shall be construed to permit the removal of such positions or work from the application of these rules except as provided in Rule 65."

In the denial of the claim on the property by Carrier's Director of Labor Relations it is stated:

As advised you in conference, the position of Chief Claim Clerk. A-47, was assigned the duty of performing loss and damage claim and investigation work at Hermitage Road in Richmond, Va. This Carrier has never had a Clerk assigned at Ellerson, Virginia, and when the Richmond Food Stores began operating out of their **new** facility at Ellerson, Va., the Railroad Perishable Inspection Agency performed the inspection work under their existing contract to inspect perishable shipments of Richmond Food Stores. (**Emphasis** supplied.)

That statement stands **undisputed** in the record. It supports a finding, along with other evidence of record, that the inspection of hard good cars at Richmond was work brought within the scope of the Agreement and reserved to the occupant of Position A-47 by application of Rule 1(b). It cannot be interpreted as meaning the work of inspecting cars of hard goods consigned to a particular industry -- in this case, Food Stores -- is reserved **to** Clerks at all points on Carrier's system. A claim to perform such work at a point other than Richmond would have merit only if: (1) the work at the particular point has been brought within the scope of the Agreement by application of Rule 1(b); or, (2) Petitioner proves by history, tradition and custom that the work, system-wide, has been performed, **exclusively**, by Clerks. Petitioner has not satisfied either of those test by substantial evidence of probative value of record in the instant case.

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 this **Division** of the Adjustment Board has jurisdiction over . dispute involved herein; and

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That Carrier did not violated the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killum
Executive Secretary

Dated at Chicago, Illinois, this **20th** day of **June 1973.**