

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23326
Docket Number CL-23144

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and station Employes
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8881) that:

(a) The Carrier violated Rule 12 and others of the Clerks* Agreement February 23, 24, 25 and 26, 1976, when they required Chief Clerk Vernon Cecil to suspend & ties on his regular assignment and perform duties assigned position of Demurrage Clerk, C-82, on each date.

(b) Carrier shall now allow Claimant Vernon Cecil eight (8) hours pay at the pro rata rate for each date as a result of this violation.

OPINION OF BOARD: on February 23, 24, 25 and 26, 1976, Carrier assigned Vernon Cecil, Chief Clerk, C-26, and Claimant herein, to perform duties assigned to the position of Demurrage Clerk, C-82.

Organization submits that this action violated Rule 12(a) (1) and the Note thereto because in its view Claimant as Chief Clerk was obligated to perform only inside duties and the assignment made by the Carrier herein required him to perform outside duties, contrary to the provisions of the Agreement.

The issues here posed are, essentially, presented and dealt with in our Award Nos. 23324 and 23325. The contentions of both Carrier and Organization are virtually identical in all three cases.

A critical issue in all three cases has to do with Carrier's defenses that, in addition to the fact that Claimant's supervisory status invested him with the obligation to perform outside as well as inside duties, Claimant's regular duties as Chief Clerk also involved the performance of outside duties.

In both the Awards here cited, this Board refused to consider the latter defense because, on review of the respective records, we concluded that the question whether the regular duties of a Chief Clerk required the performance of outside duties was not timely raised and Issue was not joined on the property prior to the filing of notice of intent.

In the **instant** case **Carrier** asserts that the question was timely raised. **Thus, Carrier makes** specific reference to its letter to **Organization** dated August 16, 1978, almost a year before the filing of the notice of Intent herein. **Carrier also** emphasizes that, **notwithstanding** adequate time and opportunity to do so, **Organization never** took exception to **Carrier's** assertion that the **regular** duties of a **Chief Clerk** required the **performance** of outside duties. On this premise, among others; **Carrier** asks that the **claim** be denied in its entirety.

The contention here made by **Carrier** is on its face cogent and appealing. However, It does not withstand scrutiny. The pertinent language of the August 16 letter, upon which **Carrier** relies, reads:

"As advised you in conference, the supervisory and instructional duties assigned to the chief clerk position are not United to either inside or outside work and as such, **Claimant Cecil** was properly required to perform the work in question on the dates of February 23, 24, 25 and 26, 1976. (Underlining supplied.)

In view of the foregoing, the rules of the Clerk's Agreement have not been violated and your claim is accordingly denied."

This **Board** fails to perceive in what way the underlined words "supervisory and instructional duties" can be read as alerting **Claimant** or **Organization** to a claim that the **regular** duties of a **Chief Clerk** were being put in issue. The chart setting forth the disposition of a **Chief Clerk's** duties does show an allowance of five hours per month to assist in the supervision of office force. It seem fair to assume that **instructional** duties might arise in that regard though the term itself nowhere appears in the chart. And nothing in the remainder of the outline of the **Chief Clerk's** duties has anything to do with **Instructional** duties.

Accordingly, the **Board** concludes that **Carrier** did not timely raise the defense that the **regular** duties of a **Chief Clerk** involved outside duties. That issue, therefore, is not considered here and no ruling is made thereon.

The remaining questions which are in issue need not be discussed here because they have been adequately considered in the two Awards already cited.

For the reasons there stated, and the authorities there referred to, we conclude that there was a violation of the Agreement in the instant case. The entire claim is sustained.

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 the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained; Claimant shall be allowed eight (8) hours pay at the pro rata rate for February 23, 24, 25 and 26, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.