

Award No. 2045
Docket No. CL-2149

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood of Railway Clerks that Mediation Agreement Case No. A-225, signed in Cleveland, Ohio, May 20, 1936, has been violated by the failure and refusal of the Carriers to make effective the provisions of Section 6 of said agreement; and,

(b) That C. & O. employees be placed in the joint operation at Muncie, Indiana, in accordance with the provisions of Section 6 of the Mediation Agreement, and that all employees who have suffered wage loss by reason of the failure and refusal of the Carrier to apply the provisions of the agreement be compensated for such wage loss.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 1, 1933, the Chesapeake and Ohio Railway Company and the New York, Chicago and St. Louis Railroad Company (which will hereinafter be referred to as the Nickel Plate) maintained separate freight house facilities, each road having its own freight office, warehouse, and yard forces, the employees on the Nickel Plate being represented by the Brotherhood of Railway Clerks and the employees on the Chesapeake and Ohio being represented by the Chesapeake and Ohio Clerks' Association.

Effective May 1, 1933, the work previously performed in the C. & O. operation was transferred to and placed in the Nickel Plate operation and under the jurisdiction of the Nickel Plate Railroad by four-party agreement between the two respective Managements and representatives of the two respective Organizations.

The C. & O. work was placed under the Nickel Plate Agreement with the Brotherhood of Railway Clerks and all vacancies thereafter continued to be filled from Nickel Plate seniority rosters.

Effective May 20, 1936, a Mediation Agreement was reached at Cleveland, Ohio covering Chicago, Illinois, Peru and Muncie, Indiana consolidations, reading as follows:

"MEDIATION AGREEMENT

Brotherhood of Railway and Steamship Clerks, Freight Handlers,
Express and Station Employees

and the

New York, Chicago, and St. Louis Railway Company

the view that it was for the Mediation Board to decide which interpretation is correct.

OPINION OF BOARD: Only the question of the jurisdiction of this Board is here presented.

The position of the Carrier Member of this Division is stated as follows:

"(1) No dispute exists between the Chesapeake and Ohio Railway and its employees as to the interpretation and meaning of Mediation Agreement Case No. A-225, signed at Cleveland, Ohio, May 20, 1936."

"(2) As the Mediation Agreement Case No. A-225 was reached through mediation, the National Mediation Board is the proper authority to make an interpretation of its meaning and application."

Jurisdiction of the National Mediation Board is defined in Section 5 of the Railway Labor Act. The pertinent part of that section is as follows:

"Second. In any case in which a controversy arises over the meaning of the application of any agreement reached through mediation under the provision of this Act, either party to the said agreement, or both may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. * * *"

Obviously, under this section there must be a disagreement over the meaning or application of a mediation agreement before the National Mediation Board would have jurisdiction. Since the Carrier Members admit there is no such disagreement between the petitioner and respondent as to the meaning of the mediation agreement, that Board would have no jurisdiction and evidently that Board came to the same conclusion when in Interpretation 12 to Case No. A-225 it said, "That the Mediation Agreement in question has in reality now been superseded by having been made a part of the basic agreement * * * (the claim) may be submitted to the National Railroad Adjustment Board for further handling in accordance with Section 3 of the Railway Labor Act."

Under Section 3 (i) of the Railway Labor Act this Board has jurisdiction of " * * * disputes between an employee or group of employees and a carrier growing out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, * * *."

A mere reading of the "Statement of Claim" will show that it comes within the provision of Section 3 (i). To illustrate, take Section (b) of the claim wherein it says, "And all employees who have suffered wage loss by reason of the failure and refusal of the carrier to apply the provisions of the agreement be compensated for such wage loss." The petitioners may or may not be able to substantiate their claim when it is presented on the merits. This Board holds that it has jurisdiction of the claim.

FINDINGS: 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; and

That this Board has jurisdiction of the claim.

AWARD

This Board has jurisdiction of the claim; let it be heard on its merits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1942.