

Award No. 8023

Docket No. CL-8087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, 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:

(a) That the Carrier violated the terms of the Clerks' Agreement when effective March 31, 1954, it nominally abolished position of Rate and Bill Clerk No. A-42-8 located at Fostoria, Ohio, Freight Station, and thereafter performed the duties by assigning them to Cashier position A-32-5 and Freight and Ticket Clerk position A-33-7, and

(b) That it further violated the Clerks' Agreement when effective April 2, 1954, it required and permitted the Freight Agent to perform duties of the abolished position, and

(c) That the incumbent of Rate and Bill Clerk Position A-42-8 and others affected thereby be paid for wage loss sustained during period position was nominally abolished, and

(d) That the incumbent of Cashier position A-32-5 and the incumbent of Freight and Ticket Clerk position A-33-7 be paid at the rate of time and one-half times their daily rate account of work assigned the positions being performed by the Freight Agent and to the extent of the time so devoted, and

(e) That the position No. A-42-8 be re-established as provided by the rules of the Agreement.

OPINION OF BOARD: This is a companion case of Docket CL-8086, Award 8022. The claim here involved grows out of the same set of facts as Award 8022, at Fostoria, Ohio.

The issue of third party notice is involved in this docket also. The observations made in Opinion of Board in that case are applicable here. There is one difference, however, in the instant case which deserves brief comment. This is a closed period claim, so it may possibly be argued that

the third party notice issue is moot. In many such situations that view might possibly be legitimate. However, in the instant case the interpretation required in order to make an award on the merits would involve The Order of Railroad Telegraphers in future work at this point on the property. Therefore, despite the closed period character of the immediate claim, the third party issue is as real in this docket as in Award 8022. Under such circumstances, the same observations made on that issue in Award 8022 are appropriate in the instant docket. Therefore, the merits of the dispute are not properly before the Division for decision until due notice has been given The Order of Railroad Telegraphers.

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 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 has jurisdiction over the dispute involved herein subject to the finding as to notice:

That The Order of Railroad Telegraphers is involved in this dispute, and, therefore, entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act.

That the merits are not properly subject to decision until said notice is given.

AWARD

Hearing and decision on the merits deferred pending due notice to The Order of Railroad Telegraphers to appear and be represented in this proceeding if it desires, or to permit the parties involved to settle the claim if they wish to do so.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1957.

DISSENT TO AWARD NOS. 8022 and 8023,
DOCKET NOS. CL-8086 and CL-8087

We dissent.

/s/ J. H. Sylvester
/s/ C. R. Barnes
/s/ A. Covington
/s/ G. Orndorff
/s/ J. W. Whitehouse
Labor Members