Award No. 8379
Docket No. CL-8166

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, 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 that:

(a) The Carrier violated the Agreement when it nominally abolished position of Clerk, Office of Agent, Pratt, West Virginia, rate $9.41 per day (now 11.18 per day), effective December 31, 1948, and

(b) Mrs. Grace Hammar be returned to the position and compensated for all wage loss sustained and other employes displaced from their positions by reason of such nominal abolishment be accorded like treatment.

EMPLOYES' STATEMENT OF FACTS: Prior to December 31, 1948 the Carrier had two employes at its Pratt, West Virginia station. Claimant Mrs. Hammar occupied the position of Clerk fully covered by the Clerks' Agreement. The other employe was the Agent, who was not covered by the Clerks' Agreement. Both employes were assigned 8:00 a.m. to 5:30 p.m., Monday through Saturday. Effective January 31, 1948 the position of clerk assigned to and occupied by Claimant Mrs. Hammar was "abolished", the duties in their entirety being then assigned to and required of the Agent; such duties then required at least four and one-half hours per day. (See Employes' Exhibit "M".)

Claimant Mrs. Hammar holds clerical seniority dating from September 22, 1922. The clerical position at Pratt had been in existence for many years when the effective Agreement between the parties was signed effective January 1, 1945.

Claim was filed on February 4, 1949 and progressed in the usual manner up to and including the Assistant Vice-President—Labor Relations, Carrier's highest officer designated to receive and consider appeals. Conferences were held on October 21, 1949, April 4, 1950, June 1, 1953 and other dates, the Carrier declining the claim.

The Employes have stated in their handling on the property that they will cite the principles enunciated in Awards 3563, 5785, 5790, and 6141.

In opposition, the Carrier might cite Awards 5489, 5658, 5730, and 5777, and be justified in contending that those awards compel your Board to conclude that the Agreement [specifically Rule 1 (b)] was not violated, but having seemingly opposite awards does not prove that the Board erred in its decisions or was inconsistent.

What this does show is that awards are made (and rightfully so) according to the circumstances in the particular case at hand. There is no other right way, because justice is not formed in a vacuum and cannot be based on erroneous reasoning.

A principle (or set of circumstances) which produces a sustaining award in one case may well bring forth a negative award in a different case with entirely different facts.

General agency or station work is in focus in the instant case, and as has repeatedly been said, it is not believed that anyone will rise up to say that such work is **exclusive to clerks;** for if such work belongs exclusively to clerks, would they not be entitled to such work elsewhere, covered by the Telegraphers' Agreement, at numerous points over the railroad where agents for decades have done all of the agency work at the particular point?

Thus, the Carrier wishes it understood that it does not cite Awards 5489, 5658, 5730, and 5777 in support of its position, but still contends, as it has throughout this Response, that this case must be settled on its **own merits,** under all of the rules of General Agreement No. 7 as they were negotiated by the parties in full good faith to become effective January 1, 1945.

7. Rule 1 (b) construed as contended would deprive Management of its right and obligation to maintain forces in keeping with work and service conditions.

It will be seen that if the contention in this case were upheld, the Carrier would be required to continue both the Agent position and the Clerk position in this case, when there is clearly only work for one employe, which would mean that the Carrier would be prohibited from abolishing positions for which it has no work. Obviously, nothing in the agreement for Clerks contemplates this, and such right and prerogative should not be taken from Management.

CONCLUSIONS

The Carrier has shown by abundant evidence that it has been the practice down through the development of the railroad industry for Agents to perform necessary station work just as such work is being performed by the Agent-Operator at Pratt, West Va., under present conditions, and that there has been no violation of the Clerks' Agreement in any respect. The Board should, therefore, deny the claim in the instant case in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The action of the Carrier complained of herein was the abolishment of the position of Clerk, Office of Agent, Pratt, West

Virginia and the assignment of duties in their entirety to the Agent covered by the agreement between the Carrier and the Order of Railroad Telegraphers. If the claim were allowed, it would mean restoring the duties to the employes represented by this Organization and removing those duties from the Agent.

Under the latest ruling of the Federal Courts passing upon the question the Telegraphers are "involved" in this dispute within the meaning of Section 3, First (j) of the Railway Labor Act which reads as follows:

> "(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them."

The case is similar on its facts to the Case of The Order of Railroad Telegraphers vs. New Orleans, Texas and Mexico Railway Co., 29F (2nd) 59, Cert. denied 76 Sup. Ct. 548, with the exception that in this case the organizations are in reverse position and a different carrier is involved. The Circuit Court of Appeals for the Eighth Circuit upheld the Opinion of the trial court which held:

> "The Award and Order of the National Railroad Adjustment Board 4734 is illegal and void in that it was rendered by said Board without giving members of the BRS notice and without the members of BRS having an oportunity in the hearing to be heard before the National Railroad Adjustment Board."

The ruling in the aforesaid case is the last pronouncement of the law applicable to matters of this kind. The same principle of law is applicable herein.

The Railway Labor Act (U. S. Code, title 45, Chapter 8) provides under "General Purposes" the following:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employes or any denial, as a condition of employment or otherwise, of the right of employes to join a labor organization; (3) to provide for the complete independence of carriers and of employes in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Under "General Duties" the first of such are:

> "First. It shall be the duty of all carriers, their officers, agents, and employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employes thereof."

It is not the purpose of this Board nor is it in the contemplation of the Railway Labor Act to render awards which the courts consider "illegal and void" as no dispute can be finally settled in that way.

For the aforesaid reasons we think it would be improper to consider the merits of the claim until all the parties involved have received notice as required by the law.

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 the Employes involved in this dispute are respectively Carrier and Employes 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 any decision on the merits be deferred.

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, the Brotherhood of Railway Clerks, the Carrier, and The Order of Railroad Telegraphers, as contemplated by Section 3 First (j) of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.