Award No. 9463
Docket No. CL-8366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 and continues to violate the terms of the Clerical Agreement when on August 23, 1954 and on subsequent days it failed and refused to allow Grover L. Dyer (a Group 3 employe) to perform work attached to position with title of "Sealer" with assigned hours 8:00 A. M. to 5:00 P. M. (1 hour meal period) position No. C-2, rate of pay $13.28 per day, Monday through Friday, and

b. That Grover L. Dyer now be allowed $.76 per day for August 23, 1954 and all subsequent days not permitted to work his position C-2, in addition to compensation already received, and

c. That Corbin Puryear be allowed one pro-rata day at $12.52 per day for August 30, 1954 and $.48 per day for August 31, 1954 and all subsequent days, in addition to compensation already received, and

d. That a cut-off Group 3 employe to be designated by the Division Committee of the Brotherhood to be compensated for any and all loss of pay.

This claim to continue until correction is made.

EMPLOYES' STATEMENT OF FACTS: In 1939 it came to the attention of the System Committee that Claimant Grover L Dyer, the occupant of a position classified as "Sealer," (Group 3) and having seniority in Group 3 as of October 19, 1903, had been assigned and was performing work normally performed by employes classified as "Clerks" and having "Group 1" seniority. A copy of Claimant Dyer's duties at that time, as

doing work previously handled by Dyer between 3:00 P. M. and 5:00 P. M. This was rejected by the Employes as not desirable.

The force was one position too large, but the Carrier was not disposed to pinch pennies or quarrel as to which position would be dispensed with. As the Employes were not agreeable to any of the suggestions, the Carrier was left nothing to do but proceed as it did, which meant abolishing the position on which the least work remained, and which was the lower rated position.

The fact that the Carrier was willing to confer, and did do so, is evidence of the fact that the Carrier was proceeding at every point in the best of faith and had no ulterior motives as have been hinted in subsequent conferences in connection with the matter.

Conclusions

The Carrier has shown by its evidence:

1. That a definite and bona fide reduction in work on the two positions had come about prior to abolishment of the lower rated Sealer position.

2. That all procedural requirements of the rules of the General Agreement were met in connection with the abolishment.

3. That Dyer was permitted to exercise his seniority rights in the manner provided by the General Agreement.

4. And that, therefore, there has been no breach of the agreement rules in any particular, so that the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence between the parties hereto.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Grover L. Dyer was a Group 3 employe attached to a position with title of Sealer prior to August 20, 1954, when such position was abolished by the carrier. The claimant held no seniority other than in Group 3.

In 1939 the System Committee contended that during the years past, work, which ordinarily belonged to Group 1, Clerical Workers, had been assigned to and was being performed by claimant Dyer as the incumbent of the Sealer position. It was contended that such work had reached or extended beyond the four hour per day point and a request was made for reclassification of the position to that of Group 1. An investigation was held and it developed that part of the work assigned to the position was comparable to that of Group 1, Clerical Workers, and the carrier signified its willingness to re-classify the position from Group 3 to Group 1.

A Memorandum of Agreement effective November 15, 1939, was signed by the parties wherein it was agreed that claimant, then regularly devoted not less than four hours per day to clerical work and the position should be classified as Group 1. However, due to equitable considerations, that is, claimant Dyer having held the position for a number of years, it was agreed that the position would not then be classified as a Group 1 position, but con-

tinued to Group 3 until Dyer left same. It was agreed that no Group 3 employes would be permitted to displace Dyer for the position and although the position was continued in Group 3, it was agreed that the position would be given the minimum Group 1 clerical rate. All temporary vacancies were to be filled by Group 3 employes.

Between November 15, 1939 and August 12, 1948, questions arose with regard to filling temporary vacancies in Dyer's Sealer position. Under the Memorandum of Agreement dated November 15, 1939 such vacancies were to be filled by Group 3 employes. Under Memorandum of Agreement effective August 12, 1948 such vacancies were to be filled by Group 1 employes. In other respects the intendments of the Memorandum of Agreement of November 15, 1939 were continued.

Dyer's Sealer position was abolished by Notice of August 17, 1954 as required by Rule 18 (f). This position was abolished as of August 20, 1954.

The question presented in this claim is whether or not under the Memoranda of Agreement of November 15, 1939 and August 12, 1948 Dyer's position could be abolished by the carrier or did Dyer have a lifetime position under the two Memoranda of Agreement.

From a careful reading of the Memoranda of Agreement and the evidence submitted by the parties in this claim we find that the carrier did not guarantee to claimant Dyer a lifetime position by the Memorandum of Agreement of November 15, 1939 nor the Memorandum of Agreement of August 12, 1948 and that said position could be abolished by the carrier when the work assigned to the Sealer position had decreased to an average of three hours and forty-five minutes per day.

The carrier did not violate the effective agreement nor the Memoranda of Agreement.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Carrier did not violate the effective agreement nor the Memoranda of Agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 23rd day of June, 1960.