Award No. 11607
Docket No. CL-11138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 its Clerks' Agreement and memoranda in connection therewith when, on March 29, 30, 31; April 1 and 2, 1958, it required Walter R. Ritter, an extra clerk assigned to the extra list established for the Group 1 Transportation roster covering Parsons Seniority Territory, to leave his seniority territory and relieve Bernard P. Hess, Clerk, located at Little Miami Transfer on Group 1 roster for Agents, Columbus and South Columbus, a separate seniority territory in which Ritter held no seniority or employment right superior to that of Williams, and

(b) That Harold Williams be allowed a minimum 8-hour day's pay at the rate of time and one-half times the straight time hourly rate of $2.28 for each of the five days involved in addition to his regular pay already allowed.

EMPLOYES' STATEMENT OF FACTS: 1. At the time cause for claim arose Clerk Bernard P. Hess was regularly assigned to the position of Interchange Clerk, Little Miami Transfer, South Columbus, Ohio, on the roster of "Agents at Columbus and South Columbus," Hocking Division. The assigned hours of Hess' position were 12:00 midnight to 8:00 a.m., rest days being Thursday and Friday. Clerk Hess was granted a week's vacation beginning Saturday, March 29, 1958.

2. During the absence of Clerk Hess on vacation, his position was filled at pro rata rate by Clerk Walter R. Ritter, holding seniority on the "Parsons" roster and then in the status of a "cut-off" (furloughed) employe assigned to the extra list maintained by agreement pursuant to Rule 3(h), to fill temporary vacancies on the Parsons roster. A copy of the Memorandum Agreement establishing the Parsons extra list is attached hereto and identified as Employes' Exhibit "A".

3. Claimant Harold L. Williams held seniority dating from February 21, 1951 on the Group 1 (Clerk) roster designated "Agents Columbus and South

instant case) was not the employe entitled to work the overtime in the instant case, so that his claim is without validity.

The Employes may argue that the Board has held in other cases that the Carrier may not escape claim on the basis of the proper employe not being named. The Carrier will not unduly encumber an already long record to discuss through all of the cases which might fall in that category, but the Carrier does submit that if the doctrine of the Board be examined in such cases it will be seen that the general reasoning in such cases has been that if some employe of a particular group has made a claim when another was the proper claimant, the Carrier will not be held liable to two claims, paying of the one claim finally disposing of any and all claims.

The instant case presents a situation which can be readily distinguished, the Carrier says, because here we have an employe at the freight station (a separate point and operation) seeking (apparently) to lay claim because no employe at LM Transfer saw fit to file claim or considered he had grounds for any claim. The same kind of reasoning carried to its ultimate and would mean that a clerk on one roster could enter a claim for overtime which he considered someone on another roster should have contended for. Such a situation could result in nothing but chaos and the breaking down of the basis of proper relations between the employes and the Carrier.

On such basis the Carrier again urges that the claim should be denied in its entirety.

In summation, the Carrier says it has shown that it has proceeded at all points fully in keeping with the spirit and provisions of all of the rules of the collective bargaining agreement, calling in and having the local employe representatives assist in making the complained of arrangements, in order to be sure that the agreement was fully followed.

The Carrier has also shown that Harold L. Williams can in no wise be a proper claimant in the case, preference to overtime work at LM Transfer (if any overtime work were necessary) going to the regularly assigned employes there before any other employes were due consideration for performing such overtime work.

The claim fails in all respects.

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 third trick incumbent at LM Transfer, South Columbus, Ohio, had earned five days' vacation during 1958. Before his vacation was scheduled to begin, he became subject to induction into the Armed Forces of the United States. Accordingly, he requested and was given permission to take his vacation March 29, 1958, through April 2, 1958. No extra or relief clerk on the roster was then available to fill the five day vacancy. Carrier arranged with the Local Chairman of the Clerks' Organiza-

tion to obtain a relief clerk, and a furloughed employe (Ritter) from another seniority roster was selected and used to fill the temporary vacancy.

Claimant was regularly assigned as Waybill Clerk at the freight house, Columbus, Ohio, and was on the same seniority roster as the vacationing employe. He claims he should have been used on an overtime basis.

From a review of all the evidence in this rather extensive record, the Board concludes that the basic issue here is whether the understanding or agreement entered into by the local officials of the Carrier and the local chairman of the Brotherhood is a bar to the prosecution of the claim. We think it is. It is true that agreements entered into by those not authorized to negotiate the terms and conditions of the collectively-bargained agreement may not set aside or abrogate the rules of the basic contract. Whenever there is a conflict between the provisions of a local agreement or understanding and those of the basic agreement, the latter prevails. But local agreements and practices **per se** are not **void**; they are **unenforceable** if and when found to conflict with the basic rules. When this occurs either of the parties may, after proper and sufficient notice to the other, refuse any longer to be bound by the local rule or practices thereunder. Thereafter Management is free to change the operation so as to bring it into conformity with the rules of the basic agreement; similarly, the Employes may seek enforcement of those rules by filing time claims for breach thereof.

Here, however, no notice was given Carrier that the Organization would refuse to honor the local agreement. Instead a penalty time claim was filed some 45 days after the incident giving rise to this dispute occurred.

Nor is this a case where unilateral action by the Carrier is merely condoned or acquiesced in by a local representative of the employes. Here there was full knowledge of the facts and active participation on the part of the local chairman. There is no showing that he was duped or coerced into making the arrangement for a relief clerk to fill the vacancy. It is clear, moreover, that he acted in the interest of both employes involved (Hess and Ritter) as well as those on the extra list at Parsons. What he did was clearly for the benefit and convenience of the employes and not the Carrier.

The conduct complained of was engaged in with the full knowledge and consent, (as well as active participation) of this Organization's representative on the property. It must be held, as a matter of law, that Petitioner is estopped from advancing a monetary claim based upon the alleged improper acts of its own agent upon which acts the Carrier relied in good faith. (Cf. Award 3111, Second Division).

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 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 the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1963.