

Award No. 18954
Docket No. CL-19091

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that (GL-6914):

1. Carrier violated the Clerks' Agreement when it failed to call D. W. Louk, Assistant General Agent, to perform service on dates of October 20 through 24, 1969, March 9 through 13, 1970 and that
2. D. W. Louk shall now be allowed eight hours of pay at the time and one-half rate for each of the above dates.

EMPLOYEES' STATEMENT OF FACTS: At Chiefton, West Virginia, there was a three trick operation consisting of a General Agent, First Trick, Assistant General Agent on the Second and Third Tricks. The position occupied by the General Agent is an X2 position and the Assistant General Agents are covered by all rules contained in the Clerks' Agreement with the Carrier.

On the dates indicated in the claim, the General Agent was on vacation and his position was filled by Mr. T. J. Fitzsimmons, extra board employee. As indicated, the Claimant was regularly assigned on the Second trick at Chiefton.

In the progression of the above dates cited in this claim, they were identified on the property as Grievance Cases C105 and C112. For the sake of expediency and since the same principle is involved, they have been combined into a single submission.

Claims were entered by Claimant, under dates of January 3, 1970 (Case C105) and May 13, 1970 (Case C112) appeal was made by the General Chairman to System Superintendent, Mr. W. Fred Mowen. (See Employees' Exhibits "A" and "B.")

Rejection of the appeals by System Superintendent Mowen are contained in his letters of denial dated February 10, 1970 (Case C105) and June 1, 1970 (Case C112). (See Employees' Exhibits "C" and "D.")

Appeal by the Employees was made of the denials of Mr. Mowen in their letter to appeal officer dated March 28, 1970 (Case C105) and July 11, 1970 (Case C112). (See Employees' Exhibits "E" and "F.")

Appeal was denied by Manager of Labor Relations, Mr. F. B. Plummer in his latter dated April 28, 1970 (Case C105) and August 21, 1970 (Case C112). (See Employees' Exhibit "G" and "H.")

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Chiefton is a small outlying point in the northern section of West Virginia which is maintained as an assembly yard in connection with the servicing of several coal mines in that area. The yard is not contiguous with the Western Maryland line but, by trackage arrangement, W. M. crews operate over B&O tracks between Bowest, Pennsylvania and Chiefton, a distance of about 70 miles. There are seven tracks in Chiefton Yard. It is the home terminal for a traveling switcher crew, which is in road service but paid the yard rate as a concession rate, and the away-from-home terminal for a pool freight crew which operates from Bowest. No yard crews are maintained at Chiefton.

At the time of the claim in October 1969, there was a General Agent and two Assistant General Agents at Chiefton, the General Agent working the first trick and the Assistants on the second and third tricks. During the March 1970 claim there was a two trick operation with the General Agent assigned from 12:45 P. M. to 8:45 P. M., and an Assistant General Agent on a tour of duty from 11:45 P. M. to 7:45 A. M.

On the claim dates, the General Agent was off on vacation and his position was filled by T. J. Fitzsimmons who was on the Clerks' extra list. The claimant is assigned as one of the Assistant General Agents at Chiefton, and claims that he should have been used to fill the General Agent's position instead of calling the extra employe.

OPINION OF BOARD: On the dates indicated in the Statement of Claim, the General Agent at Chiefton, West Virginia, was on vacation. The position of General Agent is an X-2 PERSONAL OFFICE FORCE AND EXCEPTED POSITIONS LIST position exempted from seven (7) rules of the working Agreement. While on vacation Mr. T. J. Fitzsimmons, a clerical extra board employe, filled the General Agent's position. At the time T. J. Fitzsimmons was a critical extra board employe and at the time he provided vacation relief for the General Agent at Chiefton Mr. Fitzsimmons continued to retain seniority on the Trainmen's seniority list as a furloughed Trainman. He was not, however, working in train service at any time pertinent to the time involved in this dispute.

Claim is made on behalf of one of the Assistant General Agents at Chiefton that Mr. Fitzsimmons was improperly used as a vacation relief worker; the Employees contending that he was an "extra board employe and not a regular relief employe as that term is used in the National Vacation Agreement." This contention cannot be reconciled with the language of the National Vacation Agreement. Accordingly, the claim will be denied.

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 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 of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.