

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19218
Docket Number CL-17501

Gene T. Ritter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6398) that:

(1) Carrier violated current Clerks' Agreement when on or about March 1, 1958 it arbitrarily and unilaterally removed work from the scope of such Agreement, and continued to so remove such work and failed to assign such work as volume increased, intermittently from and to the scope of such Agreement at Winchester, Virginia, and did assign such work to positions not under the Agreement, and

(2) M. Hooe, Winchester, Virginia, shall now be paid for one (1) day on July 15, 1964 and each date thereafter, Monday through Friday, at the rate of \$19.43 per day (plus any subsequent wage increases) until all of the work properly falling under the scope of the Clerks' Agreement is assigned and/or restored to positions under the scope of the Clerks' Agreement.

OPINION OF BOARD: In this dispute, the Organization contends that on or about February 28, 1963, the Demurrage and Warehouse Clerk position at Winchester, Va., was abolished and that the clerical work was reassigned and redistributed in a manner that removed a portion of it from the coverage of the Clerks' Agreement and assigned this work to Telegraphers. The Organization complains that such action violated Rule 1(a) and Rule 1(c). The Organization further contends that the involved clerical work previously performed by Employees under the scope of the Clerks' Agreement has been improperly reassigned to Operator-Clerks. The involved work being performed by said Operator-Clerks is that of demurrage, billing, wheel reports, extending charges on weigh bills, and filing and binding of records. Carrier defends this claim by contending that the claim submitted to this Board is not the same claim handled on the property; and that there was not a rule violation of the Clerks' Agreement. Carrier also contends that this Board has no jurisdiction to hear this case in which the Operator-Clerks are not made a party.

This Board finds that the Operator-Clerks have had due notice and, that, therefore, this dispute may properly be determined by this Board.

A careful examination of the record in this case discloses that there has been a material change in the claim submitted to this Board from that that was handled on the property. Handling of this dispute on the property concerned a claim emanating from the abolishment of a Clerk's position on or about February 28, 1963; the notice of intent filed with this Division concerned itself with a claim emanating from the removal of work from the scope of the Clerks' Agreement on or about March 1, 1958. Section 3, First (i), of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board requires that the claim appealed to this Board must be the same claim handled on the property. The objection raised by Carrier in this instance is not an objection to a mere minimal deviation. The claim before this Board departs to a significantly substantial degree from the claim submitted and processed on the property. Therefore, the objection of Carrier based upon this fatal variance is sustained. We, therefore, need not consider the merits of the claim.

This claim will be dismissed.

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 this claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.

LABOR MEMBER'S DISSENT TO AWARD 19218 (DOCKET CL-17501)
(Referee Ritter)

Dismissal of the dispute based on an alleged procedural defect is, indeed, a serious error inasmuch as the record conclusively establishes that the variance in the Statement of Claim is insignificant; and obviously the Carrier was not confused or misled concerning the crux of the dispute unless, of course, they can be easily confused or misled, which is doubtful.

On October 14, 1964 the Division Chairman of the Clerks' Organization presented the following claim to the Carrier's Division Superintendent:

"(1) Since the abolishment of the Demurrage and Warehouse Clerk position at Winchester, Va., on or about February 28, 1963 the Carrier has continued to violate the Clerks' Agreement at Winchester, Va. by requiring and/or permitting persons employed on positions outside of the scope of said agreement to perform work falling within the scope of the said agreement, and

(2) That M. Hooe, Winchester, Va., now be paid for one day each date, Monday through Friday, at the rate of \$19.43 from July 15, 1964 until all of the work properly falling under the scope of the Clerks' Agreement is restored to positions under the scope of the Clerks' Agreement."

The claim was declined by the Division Superintendent and was appealed to the Carrier's Director of Labor Relations by the Clerks' General Chairman. In his letter of April 6, 1965 the General Chairman stated:

"This claim involves the improper reassignment of duties following abolishment of the Demurrage-Warehouse Clerk position, and proper application of Rule 1(c) of our Agreement."

The Notice of Intent filed with this Division on November 9, 1967 discloses the following:

"STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6398) that:

(1) Carrier violated current Clerks' Agreement when on or about March 1, 1958 it arbitrarily and unilaterally removed work from the scope of such Agreement, and continued to so remove such work and failed to assign such work as volume invreased, intermittently from and to the scope of such Agreement at Winchester, Virginia, and did assign such work to positions not under the Agreement, and

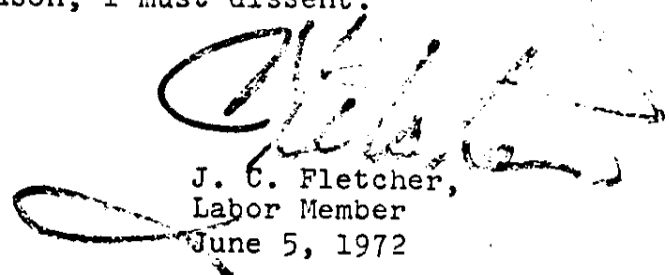
(2) M. Hooe, Winchester, Virginia, shall now be paid for one (1) day on July 15, 1964 and each date thereafter, Monday through Friday, at the rate of \$19.43 per day (plus any subsequent wage increases) until all the work properly falling under the scope of the Clerks' Agreement is assigned and/or restored to positions under the scope of the Clerks' Agreement."

The only difference between the two claims is that the Statement of Claim filed with the Board is inclusive of the last date of abolishment prior to the inception of the claim stated by the Division Chairman. Neither date in Part 1 of either above-quoted Statement of Claim is the first date of claim. The first date of claim is controlling. The first date of claim, in both instances, requests one thing; that the Claimant be paid from July 15, 1964 until all of the work properly falling under the Clerks' Agreement is restored to the scope of that Agreement.

Moreover, the claim arising at Winchester, Virginia, carried Organization Case File #1563 and Carrier File #C-1989 throughout its entire handling, including its submission to this Board. Prior to its submission to this Board, the Organization's General Chairman and the Company's Director of Labor Relations agreed to an extension of time limits within which to submit the claim to the Board. Had such an Agreement not been made on the property, the claim clearly would have been dismissible as being out of time by the Board. It is unfortunate that the Majority in their findings have now dismissed the claim on an alleged procedural defect when the parties, themselves, prior to its submission to this Board waived a more serious and obviously more fatal time limit defect.

It is unfortunate that the Majority did not get to the merits of this dispute - a result both Petitioner and Respondent were entitled to receive; a result that both Petitioner and Respondent clearly indicated they desired when they agreed to waive time limits to progress the dispute to this Board; a result that would have clearly sustained the Petitioner's claim under the provisions of Rule 1(c) 1, and the authority of Awards Nos. 12, 13, 47, 52, 104, 126, 134, 135 and 145 of Special Board of Adjustment No. 192 (Clerks - B&O, Francis J. Robertson, Neutral Member).

The Majority erred in not resolving this dispute on its merits. For this reason, I must dissent.



J. C. Fletcher,
Labor Member
June 5, 1972