

COPY

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 49

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Rules of the Clerks' Agreement when it failed to bulletin the positions of Outbound Clerk, Checker, Chalker, Weighmaster and two Bill Clerks at the Keyser, W. Va., Hump Yard and Scale Office promptly upon establishment on August 23, 1956, and

(b) Carrier further violated said Agreement when it discontinued such positions at intervals for periods of less than seven (7) calendar days duration, and

(c) Carrier now be required to pay each of the following claimants one minimum day for each date claimed on and after August 27, 1956, until the violation ceases:

Ruth A. Barr	- Bill Clerk	- September 3, 4 and 5
Sarah J. Swisher	- Bill Clerk	- September 3, 4, 5, 10, 17, 18, 20, October 1, 8, 15, 16 and 29.
Elaine D. Hoover	- Weighmaster	- September 3, 4, 5, 27, 30, October 1, 13, 14, 15 and 16.
L. L. Lemon	- Outbound Clerk	- September 3, 4 and 5.
J. J. Davis	- Checker	- September 3, 4 and 5.
S. L. Robinson	- Chalker	- September 9, 20, October 13, 14, 21 and 28.

FINDINGS:

Six regulary assigned positions constituting the third trick clerical force at Keyser, West Virginia, were abolished. Beginning August 23, 1956 the positions were worked on an extra basis. On November 12, 1956 the positions were placed on bulletin. This claim is based upon the assertin that during the period August 23, 1956 to November 12, 1956, the Carrier should have re-established the positions involved on a regularly assigned basis.

The employes cite Rule 14 (Guarantee) and Rule 31 (Bulletining) in support of this claim.

The Carrier asserts that Rule 31(b) (Bulletins) carries with it the presumption that positions which are required to be bulletined will be regular positions of some duration rather than extra positions worked solely to meet a fluctuating need.

The record reveals that the six regularly assigned positions were abolished on June 29, 1946. No question is raised about the bonafide nature of that abolition.

The fact that there are provisions in Rule 37 governing the working of extra employees indicates that the Agreement contemplates that not all work accruing to the employees covered by the Clerks' Agreement must be performed only by regularly assigned employees. Hence, it is clear that the mere fact that certain work was performed for eight hours on a given day would not necessarily require that such work be bulletined as a regular assignment. Rule 14 (Guarantee) and Rule 31(h) when considered together clearly carry the necessary implication that when it is reasonably anticipated that work will be constantly recurring and will be required to be performed on a regular daily basis, the Carrier must establish a regular position which much be bulletined and to which the five day a week guarantee provided for in Rule 14 would attach. To hold otherwise would render both rules meaningless.

Except for rules governing employment of platform forces, none of the rules cited and none which we can find carry a definitive formula for determining when a position must be considered as regularly assigned. It would appear, therefore, that initially it would be a matter for Carrier's discretion as to when given work should be assigned on a regular basis, subject to the reasonable restrictions implied from Rules 14 and 31. This Board is not empowered to write rules and, accordingly, cannot prescribe any formula for requiring the establishment of regular assignments. In the instant case, it is shown that commencing with the week beginning Sunday, September 23, 1956, and continuing through the week ending Saturday, November 10, 1956, a period of seven weeks the positions were worked four and five days each week. For the period August 23, 1956 to September 23, 1956 it is shown that the positions were worked three days in two of the five weeks involved, six days in another week and five and four days in the other two weeks. It is only reasonable to assume that after five such weeks of experience, the Carrier should have anticipated that the work would be constantly recurring and would be required to be performed on a regular daily basis. It does appear, therefore, that the Carrier waited an unreasonably lengthy time before it bulletined the positions. A reasonable point in time at which the Carrier should have bulletined the positions would appear to be for the week commencing September 23. The claim will, therefore, be sustained as made for each day less than five that the positions were not worked in each week commencing with the week beginning September 23, 1956 until November 12, 1956 when the positions were bulletined.

AWARD

Claim disposed of as indicated in Findings.

/s/ Francis J. Robertson
Chairman

/s/ E. J. Hoffman
Employee Member

/s/ T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
27th day of August, 1959.