

COPY

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES:

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

AWARD IN DOCKET NO. 16

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

(1) Carrier violated the Clerks' Agreement at various points on the Pittsburgh Division when it contracted out the janitor work at Etna, Wildwood, Glenshaw, Allison Park, Bakerstown, Eidenau, Zelienople, Dunbar, Cheat Haven, Leith, Oliver, Smithfield, Elm Grove, Point Marion, Hyndman, Morgantown, Rockwood, Uniontown, and Johnstown and/or other points located on the Pittsburgh Division, to an independent contractor, and

(2) That Charles B. Cook, Arthur L. Rich, George Reese, Edward Sheffield, Ulysses Garrett and others be paid eight hours each at \$12.06 per day commencing April 10, 1954, until the violation is corrected.

FINDINGS:

At various points on the Pittsburgh Division the Carrier for a period of at least 20 years has been contracting out certain work to independent contractors. The contracts are for performing custodial and porter service with the exception of two locations where mail is handled to and from trains. Except for a contract covering the cleaning of windows at the freight station at Johnstown the amounts paid under the contracts do not exceed \$48.00 per month.

The disposition of this claim turns upon the interpretation of Rule 1(d)1 which rule reads as follows:

"These rules shall not apply to laborers on coal and ore docks or to laborers on piers, wharves and other water front facilities not a part of the regular freight station forces, nor to individuals where amounts of less than forty-eight dollars (\$48.00) per month are paid for special services which take only a portion of their time from outside employment or business; and not more than one (1) such individual shall be employed at any one point.

The term 'special services' is not intended to apply to clerical work, except by mutual agreement between the parties signatory hereto."

It would appear that in providing that the term "special services" was not intended to apply to clerical work the parties contemplated that some type of work other than clerical was included within that term. It is evident from the practice cited by the Carrier and by handling of similar claims that the employes have recognized that the term "special services" includes work of the nature here involved. Accordingly it would appear that in using the words "clerical work" in Rule 1(d)1 the parties intended to exclude from the term "special services" work of the nature described in the definition of a clerk in Rule 1(a). Clearly the work performed by these contractors was not of such a nature. It cannot be said the practice shown is in conflict with the peculiar wording of Rule 1(d)1, which rule is distinguishable from the rules in the awards cited by the employees. Accordingly we hold the practice to be controlling with respect to the meaning of the rule and find no violation of the agreement except at Johnstown where the amount paid under the contract exceeded \$48.00 per month.

The claim with respect to Johnstown was initially made on February 14, 1955. Reparation under this award, therefore, will begin with December 16, 1954 and it appearing that the contractor performed no work on Saturdays and Sundays, such reparations will be on the basis of a call for five days each week continuing until May 2, 1955, when the contract was cancelled or amended so that the amount paid did not exceed \$48.00. The question of who is entitled to payment will be referred back to the parties.

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.