

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. 20

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

(1) Carrier violated and continues to violate the Rules of the Clerks' Agreement when it refused and continues to refuse to establish a Group 2 position to perform the work now performed by employees not covered by the Clerks' Agreement in the office, Locomotive Shops, Fairmont, W. Va., and

(2) That R. W. Masters, Jr. and any other person or persons who have been denied full use of their seniority account failure to establish a Group 2 position at this location, shall now be compensated for one day's pay each date beginning with December 1, 1954 and continuing until the contested work is returned to the scope and application of the Clerks' Agreement.

FINDINGS:

In December of 1954 Carrier completed a new office building at the Locomotive Shops in Fairmont, about $\frac{1}{4}$ mile from the car shops at that point. A shop laborer (not covered by the Clerks' Agreement) is assigned to cleaning the offices at both shops. Further, the employees assert that an employee not covered by the Clerks' Agreement handles mail between the Shops and Fairmont Station.

There is some conflict with respect to the handling of the mail. It appears from the contentions of the Division Chairman in the Memorandum of Conference with the Division Superintendent that the carrier has been assigning a Group 3 employee from the Stores Department to accompany the Local Storekeeper in the latter's automobile to and from the station twice a day.

For quite some time before the erection of the new building the cleaning and janitor work now complained of had been performed by Mechanical Department employees in the Locomotive Shop and Car Shop at Fairmont.

The employees contend in substance that conditions changed when the new building was erected in 1954; that under Rule 1, Group 2, it is provided that janitors and messengers at offices and stations come under the Scope Rule of the Clerks' Agreement; if there is sufficient Group 2 work available to create a full-time position Carrier is obligated to establish a Group 2 position and Group 2 employees have a superior right to perform it in preference to employees in other groups or employees not covered by the Agreement.

The Carrier contends the amount of work involved is less than four hours within a spread of 10 and therefore under Rule 1(b) may be properly assigned to employees outside the agreement. In rebuttal to this argument the employees contend that Rule 1(b) covers only clerical work and does not refer to Group 2 or Group 3 work.

Rule 1(b) reads as follows:

"When the assignment of clerical work in an office, station, warehouse, freight house, store house, or yard, occurring within a spread of ten (10) hours from the time such clerical work begins, is made to more than one (1) employee not classified as a clerk, the total time devoted to such work by all such employees at a facility specified herein shall not exceed four (4) hours per day."

It is implicit in the employees' rebuttal to Carrier's argument that under the circumstances of this case if the work here involved were actually less than four hours but in the nature of Group 1 work that it might properly be performed by employees outside the agreement. However, because the work involved is not of such a nature the employees are now arguing that it may not be so assigned. Yet, it is shown that for a period of more than twenty years this identical work, prior to the change in the locomotive and car shops at Fairmont, was being performed by employees outside the agreement. In addition it is shown by the Carrier that as far back as 1951 the Carrier denied a similar claim for money payment where janitor work was performed by an employee not covered by the agreement and the claim was not further progressed by the employees. Thus practice and acquiescence in carrier's decision supports the carriers argument in this case. It cannot be said that Rule 1 is clear and unambiguous and therefore the practice would be controlling with respect to the meaning of the rule.

The employees assert that the time spent in cleaning the offices is in excess of four hours. This is based upon an allegation (which the carrier denies) that the employee who had been doing the cleaning at the office building at the locomotive shops showed four hours on her time card but after complaint in July 1954 was instructed to show only three hours. There is nothing to indicate that more than four hours were so spent and the Carrier asserts that it was considerably less. On this phase of the complaint we can only conclude that the employees have not shown sufficient facts on which to base a finding of violation. With respect to the messenger service being performed by the Group 3 Stores Department employee, there is no showing of the amount of time so involved and nothing to indicate that if coupled with the other work it would exceed four hours.

AWARD

Claim dismissed.

/s/ Francis J. Robertson
Chairman

/s/ E. J. Hoffman
Employee Member

/s/ T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
26th day of August, 1959.