CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4219
Referee Robert W. McAllister Docket Number 4199

PARTIES TO DISPUTE: Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, AFL-CIO

Baltimore & Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-140) that:

1. The Carrier has violated Rules 25, 28 and other related rules of the current Agreement from November 9, 1981 to December 27, 1981, inclusive,...by not establishing the starting time of four positions in East St. Louis, Illinois in conformity with the Agreement, and by not working the incumbents of those positions ahead of time and not properly compensating for doing so.

2. The Carrier shall now be required to pay the incumbent of each listed position, which has been worked in violation from November 9, 1981 to December 27, 1981, inclusive...punitive rate for starting the position earlier than the Agreement calls for:

Position #	Incumbent	Amount of time started work early each day / Amount of claim for each day worked
(1) P-302	M. E. Schroeder	one hour
(2) P-314	Vacant	one hour on Wednesday, Saturdays and Sundays
		One and one-half hours on Thursdays and Fridays
(3) P-315	R. I. Thornton	one and one-half hours
(4) P-316	D. K. Levy	one hour

OPINION OF BOARD: This claim involves four Patrolmen assignments at the Carrier's East St. Louis, Illinois, facility. The Organization contends the Carrier violated the Agreement by not scheduling the starting times of the four assignments which should have been continuous in accordance with Rule 25(c). The Carrier contends there is no Agreement Rule requiring these assignments be continuous. Notwithstanding, the record discloses that the parties entered into a Memorandum of Agreement on May 8, 1981, to become effective July 1, 1981. In advancing this time claim, the Organization cited Rules 25 and 28 and other related Rules of the Agreement as the basis for its position. The Carrier, in its August 31, 1982, letter to the District Chairman, discussed in detail the application of the May 8, 1981, Memorandum of Agreement. The Board, upon examination of that document, finds it controlling. Nevertheless, that Agreement specifically incorporated the labor protective conditions set forth in the New York Dock Conditions as applicable to the Agreement. As the controlling instrument,

the New York Dock Conditions contains its own procedures for the resolution of disputes arising therefrom. Article I, Section 11, Arbitration of Disputes, designates an Arbitration Committee to whom all disputes or controversy with respect to interpretation, application, or enforcement may be referred. Accordingly, we find this Board lacks the Jurisdiction to resolve a dispute arising from the New York Dock Conditions Agreement, which mandates the decision of the Arbitration Committee shall be final and binding.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1985.

LABOR MEMBER'S DISSENT TO
FOURTH DIVISION AWARD NO. 4219, DOCKET NO. 4199
(REFEREE ROBERT W. MC ALLISTER)

The Majority erroneously concluded that the Fourth Division did not have jurisdiction in the matter giving rise to Award No. 4219.

This decision does not resolve the legitimate issue put before this Board. Both the Carrier and the Organization argued the dispute in the context of the rules of the schedule working agreement covering the Patrolmen employed by the Baltimore and Ohio Railway Company. While the positions in question resulted from an implementing agreement reached under the auspices of the New York Dock Conditions, the dispute between the parties involved the interpretation of Rule 25 of the working agreement.

The Majority's inability to distinguish issues arising from the basic agreement from those arising under the New York Dock Conditions renders Award No. 4219 in palpable error. Clearly, this case should have been decided in accordance with the expressed language of Rule 25. This dispute cannot be characterized as having been one contemplated to require arbitration in accordance with Article I, Section II of the New York Dock Conditions.

By failing, or refusing to rule on the merits of the claim, the Majority has merely perpetuated further disputes.

Decisions which fail to properly address the issue presented only lead to more unresolved grievances and are contrary to the expressed purposes of this Board.

The Majority Opinion is in error and we vigorously dissent.

William R. Miller, Labor Member

Date 4-8-85