

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award ~~Number~~ 20147
Docket Number CL-20199

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Bangor and **Aroostook Railroad** Company

STATEMENT OF CLAIM: Claim of ~~the~~ System ~~Committee~~ of the Brotherhood (**GL-7279**)
that:

1. Carrier violated Rule 1, section (b) **among** others of the current working rules agreement effective September 1, 1949 and as amended, when it assigned, a Supervisor, not covered by the Rules agreement to run monthly **reports** on "Unit Record" equipment and subsequently on "Computer" equipment.

2. Carrier shall pay Mr. Gerald **Stillman**, clerk Operator, Data **Process-**ing Section, General Office, Bangor, Maine, two (2) working days pay at rate of \$4.1365 Per Hour, total \$66.18.

OPINION OF BOARD: Claimant was hired September 22, 1969 as a Machine Operator in the Data Processing **Section** of Carrier; Carrier alleges that it told him at the time of hire that it was evaluating computerization and he **would** not be guaranteed more than- twelve months work. He was finally **termin-**ated, due to computerization, on May 24, 1972. Carrier secured a computer about December 1, 1971 and also hired a Programmer-Analyst at about the same time. Starting in January 1972 the **Programmer-Analyst** engaged in writing, testing and "debugging" programs for the computer; reports were run on a parallel basis in the Data Processing Section and by the **Programmer** during this break-in and refinement period. At the same time, the Senior Machine Operator from the Section was being sent to a training program **in** New York to become a "Computer Operator". The Claim arises from the allegation that in February 1972 certain reports which had been previously handled by the Data Processing Section were now being accomplished by the **Programmer** for both study and normal use.

The Claim involves alleged violations of the following rules:

"Rule 1 - SCOPE ~~-EMPLOYEES~~ AFFECTED

* * * * *

(b) Positions and work within the scope of this agreement belongs to the **employees** covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except in the manner provided in Rule 49."

"Rule 41 * * * * *

(b) When new machines, office appliances or devices are adopted in the performance of work covered by this agreement, employees covered by this agreement shall be given preference for such employment in accordance with seniority and will be fully instructed in the operation of such new machines or devices without causing **employees** to lose rest or time."

First, with respect to **Rule 41(b)**, **there** is no evidence whatever in the record to support the bare assertion that Carrier has violated this rule. Petitioner asserts that Claimant had not been afforded training by Carrier **in** the operation of the new computer. **This** statement is obviously accurate but it ignores the fact that a more senior clerk, Assistant Manager R.J. Cyr, was sent to school to become a Computer Operator in order to operate the new equipment. It should be noted that the operation of the computer by this retrained employee retained the work within the Scope of the Agreement, without the employment of replacement personnel.

An examination of the Claim raised on the property and progressed to the highest officer of Carrier reveals **that this** was a continuing Claim, had no specific dates as to the work **removal**, did not specify the time span of the involved work or any other details. Nowhere on the property is there any indication of how much time the reports discussed took Claimant, or if any Losses accrued to him **or** any other employees as a result of **the** alleged change. It must then be noted **that** the Claim presented to this Board is not a continuing Claim, also **contains** no date of specific violation, and alleges that Carrier **"...assigned** a Supervisor, not covered by the Rules agreement to **run** monthly reports on 'Unit Records equipment and subsequently on 'Computer' equipment." A review of the record indicates no evidence of a supervisor (or any other non-scope **employee**) operating Unit Record equipment while the record is equally clear that the **Programmer**, who was not covered by the Agreement, did operate the computer during the break-in-period.

Petitioner's case is fatally flawed in that: the dates of the alleged violation are not set forth (See Awards 18040, 12366, and 19477); there is substantial variation between the Claim handled on the property and that presented to this Board; and finally there is no evidence that any work was removed from the Scope of the Agreement.

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Docket Number CL-20199

Page 3

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 the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.