

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20313

Docket Number CL-20424

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(Bangor and Aroostook Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7368) that:

1. Carrier violated the Agreement, particularly Rules 1(b) and 2(b), when it permitted, Mr. B. A. Sawyer, its Freight Claim Agent and **Mr. T. A. Mercier**, Chief Claim Adjuster, both, Carrier Officials, (Claimants Supervisors) to operate and produce from a Xerox machine, 888 copies of various claims during the period of March 28-31, 1972 inclusive.

2. Carrier shall compensate Claim Analyst Clerk, Mr. R. J. Laffey for twenty-five (25) hours pay at pro-rata in depriving him of this work.

OPINION OF BOARD: Over a four day period in March 1972, two non-agreement **employees** duplicated by Xerox some 888 potato shipment claims which related to some impending litigation. Claimant held the position of Claim Analyst in Carrier's Accounting Department. The duplicating involved about twenty-five hours of work.

Petitioner relies on Rule 1(b), Rule 2, Rule 3(b) and Rule 16(e) in support of its position that the work should have been assigned to Claimant - or otherwise not removed from the Scope of the Agreement. Those Rules provide:

"Rule 1 - SCOPE - **EMPLOYES** AFFECTED

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(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 2 - DEFINITION OF CLERK

(a) **Employees** who devote four (4) **hours** or more of their **time** on any day to writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and **similar** work and telephoning in connection therewith, and to the operation of office mechanical equipment or devices as are now used in the performance of such work, or as may hereafter be adopted, shall be designated as clerks or clerical workers. **The** foregoing definition shall not be construed to apply to office boys, messengers and chore boys or other **em-**ployes doing similar work nor to **employees** engaged in assorting tickets, waybills, etc., nor to **employees** operating office or station appliances or devices, such as those for perforating papers, addressing envelopes, duplicating letters and statements, **numbering** forms or other papers and adjusting dictaphone **cylinders**.

(b) It shall not be permissible under Paragraph (a) of this rule to assign clerical work occurring within the spread of the hours of assignment to more than one position not classified as a clerk for the purpose of keeping the time devoted to such work by one **employee** below four (4) hours per day."

"Rule 3 - SENIORITY DISTRICTS

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(b) Within the confines of each seniority district, employees have prior rights in accordance with their length of service within the district (fitness and ability being sufficient) to promotion, assignment, displacement and work. It shall therefore, not be permissible to assign an **employee** to a part or the whole of the work of one or more positions in other seniority districts except as otherwise specifically provided in these rules."

"Rule 16 - DAY'S WORK AND OVERTIME

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(e) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned **employee** who will otherwise not have forty hours of work that week; in all other cases by the regular **employee**."

While admitting that non-Agreement personnel use the photo copying equipment, Petitioner **urges** that when the **volume** of copying reaches the proportion that it did herein, it is no longer incidental work and is clearly clerical work **under** the Agreement.

Carrier argues that there was no removal of work or positions of work from the Agreement. Carrier states that over many years, without challenge from the Organization, all classes of office workers (including non-Agreement personnel) regularly perform photo copying work. Carrier contends that covered **employees** have not been vested with exclusive rights to operate copying machines, that there is no rule support for such exclusivity, and that Rule 2(a) specifically exempts from the definition of clerks or clerical work the task of operating equipment for the purpose of duplicating Letters or statements.

In support of its argument, Petitioner relies in part on Awards 19719, 19769, 19783 and 19999 all of which involved the same parties and rules as those herein. All of those Awards may be distinguished **from** this dispute in that they involved work or positions which were clearly covered by the Scope Rule, whereas that point is at issue herein.

Petitioner's argument is based on the hypothesis that work has been removed from Agreement in violation of Rule 1(b). Since it is admitted that photo copying work is not exclusively assigned to covered **employees**, the argument maintains in effect that the volume of work involved in this dispute is determinative of exclusivity. We do not accept this theory, since it has neither rule support nor Logic to back it. Since the work in question is not specifically covered by the Language of the Agreement and there is no evidence to show that it has been exclusively performed by the covered **employees**, there can be no basis for the contention that it has been removed from the Scope of the Agreement. The Claim must be denied.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONALRAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST: *A.W. Paulore*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.