

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21268
Docket Number CL-21133

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(**Steamship Clerks. Freight Handlers,**
(**Express and Station Employees**
(
(The Atchison, Topeka and Santa Fe
(**Railway Company**
(**- Coast Lines -**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-7805, that:

(a) Carrier violated the rules of the current **Clerks' Agreement** at Richmond, California **commencing** on or about April **23, 1973**, and continuing each day until the work of operating the teletype machines and running inquiries thereon is removed from the Quality Control Supervisor and is returned to employees **under the Clerks' Agreement, and**

(b) **Mr. H. W. Perkins** and/or the **successor** shall be compensated **eight** hours pay at **time** and one-half at the Head Car Clerk rate April 23, **1973**, and continuing each day so long as the **Quality** Control Supervisor is allowed to perform this clerical work as a result of such violation of Agreement roles.

OPINION OF BOARD: This dispute involves the use of a teletype machine by a **Quality** Control Supervisor **in** an effort to trace the location of certain cars. The Claim **was** filed as a continuing claim, originating in an incident on April 23, **1973**.

On January 2, **1970** Carrier instituted a new teletype system the **ASR 35** to effect **modern teleprocessing** of information as part of a "Real Time Data System". All Information that **is** added to the system, which is centered at the main **computer** in Topeka, **Kansas, is** done by clerical personnel. Carrier has operated teletype machines on **its property since 1927**. Carrier stated, without denial by the **Organization**, that supervisors **and** other exempt personnel had operated the **new ASR 35** machines for three and one-half years, prior to the claim, in the presence of clerical **employees**, without complaint. The Quality Control Supervisor had made similar use of the equipment on occasion prior to April 23, 1973.

Both parties to this dispute object to new data being presented to this Board, in conjunction with the submissions, **which** had not been handled on the property. The positions are well taken in accordance with well established principles; **accordingly**, the data **in** question **will not** be considered in the resolution of this dispute.

Petitioner alleges a violation of the Agreement in that the work of transmitting and **receiving** car tracer messages was reserved to the telegraphers on this property by history, tradition and contractual right, and is now **reserved** to the Clerk's craft by virtue of the Telegraphers' and **Clerks'** separate scope roles being combined into a single scope rule as of the consolidation of the Agreements on **November 1, 1972**. It is argued further that the work of operating teletype machines on this property has been performed by either telegraphers **or clerks** to the exclusion of all others since 1927. In support of this last point, Petitioner relies on a **series** of Awards from this **Board (Awards 8538, 9005, 10683 and 10776 among others)**. Petitioner also argues that the work of tracing cars is not directly an integral part of the Quality Control Supervisor's regular duties. **Finally**, it is **contended that the violation herein involves** a continuing claim, as contemplated by Article V, Section 2 of the **1954** Agreement.

Carrier contends that the Scope Rule on this property **is** general in nature and provides, **furthermore**, that:

"Officers or employees not covered by this Agreement shall not be permitted to perform **any** work or **function** belonging to the craft or class here represented which **is not** directly and **immediately linked** to and an integral part of their regular duties, except by agreement between the parties signatory *hereto*."

Carrier argues that **prior to** the installation of the ASR 35 teletype system, **anyone** could make inquiries by telephone as to the location of cars and there never was a complaint from the Clerks' Organization. The current system of using the ASR 35 teletype **machine** does not add any information to the computer. **Carrier** asserts that the use of the **ASR 35**, since the first day of Installation in 1970, by supervisors including the Quality Control Supervisor herein, has been linked to and an integral part of their regular duties. Carrier also **argues** that by acquiescence for three and one-half years, the claim is not timely and should **be barred**. Carrier also argues that there has **not** been and **cannot** be any evidence that the use of **this** equipment or work **has** been historically, customarily and exclusively performed by the craft on a system-wide basis.

This Claim fails on one major ground. Petitioner has **never** established **any** facts to **prove** that the work of making **inquiries** via the Teletype by the Quality Control Supervisor was **not** an integral part of his regular duties and hence permissible under the Scope Rule Supra. Carrier has presented data **affirmative** to its position on this issue while Petitioner has provided **nothing of substance**. We have long held that assertion does not **take** the place of evidence. In view of this **conclusion**, we do **not deem** it necessary to **deal** with the other issues and **arguments** raised. 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.