

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22988
Docket Number CL-22932

Richard R. **Kasher**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(The River Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8773)
that:

1. Carrier violated the effective Clerks' Agreement, particularly the Memorandum of Agreement, dated December 1, 1977, when on Tuesday, March 14, 1978, it required **and/or** permitted an **employee** not covered by the scope of the governing **Agreement** to perform work covered by the scope thereof.

2. The Carrier shall now be required to compensate Clerk Robert **Fuldauer** eight (8) hours' pay at the time and one-half rate of his position of Chief Timekeeper (\$63.84 per day) for Tuesday, March 14, 1978.

OPINION OF BOARD: The Claimant, Mr. Robert **Fuldauer**, was assigned as Chief Timekeeper **on** March 14, 1978, and was the senior fully covered **employee** in the General Office. He alleged that Comptroller R. **Spitler** violated the parties' Scope Rule and Section 7 of a Memorandum of Agreement, dated December 1, 1977, by operating certain teleprocessing devices of a newly installed computer system. The remedy sought is eight (8) hours' pay at the time and one-half rate of his position of Chief Timekeeper.

Prior to September 8, 1977 the Carrier decided to install a **computer** with various teleprocessing devices to **accommodate** work previously performed manually by Bill Clerks and Car Record Clerks in the General Office. Negotiations on an **implementing** agreement were initiated on **September** 13, 1977 and on December 1, 1977 a **Memorandum of Agreement** was **entered into**, which reads in pertinent part as follows:

"Section 7

All teleprocessing devices located in Carrier's General Offices shall be operated exclusively by **employees** covered by the scope of the basic agreement between the parties."

On December 27, 1977, Clerical Advertisement No. 804 was issued, describing two new Input/Output **Technician-Clerk** positions as follows:

"Operate IBM 3742 and IBM System/32; to perform necessary clerical functions as directed by the Secretary Treasurer and/or Agent and their assistants."

On Tuesday, March 14, 1978, the Claimant **observed** Comptroller Spitler, an **employee** not **covered** by the scope of the basic agreement, operating the teleprocessing devices of the IBM 3742 System by running yard checks, i.e., securing car numbers, locations, contents, arrival dates, etc., which the Organization alleges is work regularly performed by the incumbents of **Input/Output Technician-Clerk** positions.

The only defense raised by the Carrier on the property was that the Comptroller did not perform clerical work. Carrier also asserted that the Organization failed to establish its claim by a preponderance of probative evidence. *

This Board disagrees and finds that the Organization carried its burden of proof. The Organization submitted a statement signed by the Claimant and five other **employees** who witnessed the violation. The alleged violation was adequately detailed, i.e., securing car **numbers**, location, etc., and the work was within the parties' Scope **Rule**.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.