

The Third Division consisted of the regular members and in addition Referee John B. **LaRocco** when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9845) that:

1. Carrier violated the effective Clerks' Agreement when, **on** June 19, 22, 26, August 5 and 16, 1982, it required **and/or** permitted **employees** not covered by such Agreement to perform work at North Bessemer, PA. reserved to employees covered thereby;

2. Carrier shall now compensate the senior available unassigned employee eight (8) hours' pay **at** the pro rata rate of Clerk North Bessemer (**XB** Tower) and for all mileage and living allowances provided for by Agreement for each of the above dates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Parties to said dispute waived right of appearance at hearing thereon.

This case is the consolidation of claims covering five dates in 1982 when the Carrier allegedly assigned work covered by Rule 1 (Scope) to train service employees.

Prior to June 19, 1982, the Carrier maintained a seven day a week, around the clock Clerk-Operator XB Tower position at North Bessemer Yard, a facility jointly operated by the Carrier and the Union Railroad Company. On June 19, 1982, the Carrier eliminated the second trick Clerk-Operator assignment and rearranged the hours of work for the remaining two shifts. Thereafter, for eight hours each day, there was not a Clerk-Operator on duty in the

XB Tower. The Organization alleged that when the tower was not manned with an employee covered by the Agreement, the Carrier allowed strangers to the Agreement to clear signals, throw switches, and restore derails for incoming and outbound Carrier and Union Railroad trains.

The issue presented to this Board is whether or not the disputed work was reserved to the XB Tower Clerk-Operator position pursuant to Rule 1. The portion of Rule 1 most pertinent to this dispute is Rule 1(d) which reads:

"Positions or work coming within the scope of this agreement belong 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 by agreement between the parties signatory hereto; except that management, appointive or excepted positions, or other positions not covered by this agreement may be assigned to perform any work which is incident to their regular duties."

We recently addressed a similar Scope Rule controversy involving the XB Tower clerical position. In Third Division Award No. 24056, we found insufficient evidence to definitively interpret this intricate Scope Rule. Like the case decided in Award No. 24056, the Organization has failed to proffer sufficient, probative evidence that the work in question is covered by the Agreement even if this Board assumes that Rule 1 is a positions and work scope provision. On the other hand, the Carrier has affirmatively demonstrated that the disputed work is incidental to the regular and usual duties of the Chief Train Dispatcher (clearing signals) and the train crews (handling switches and derails). The work in question occurred so infrequently and consumed so little time that employees not covered by the Agreement could perform the work, which was clearly related to their primary duties, in accord with the express exception contained in the final clause of Rule 1(d).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: 

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.