

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27094  
Docket No. CL-26349  
88-3-85-3-65

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

PARTIES TO DISPUTE: (

(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9979) that:

1. Carrier violated the effective Clerks' Agreement when on or about January 3, 1983, it removed the handling of interchange reports from employees covered thereby and required and/or permitted outsiders employed by the Association of American Railroads to perform this work in somewhat different form;

2. Carrier shall now compensate the first turn Assistant Machine Operator and the Relief Clerk fifteen (15) minutes' pay at the time and one-half rate of their respective positions for January 3, 1983, and for each and every day thereafter that a like violation occurs."

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.

Beginning in 1977, the Carrier became a participant in the Interchange Continuity System Program created by the Association of American Railroads (AAR) for use in its central computer in Washington, D. C. Essentially, this program furnishes data about inbound and outbound railroad car interchange to the AAR central computer. The data is automatically compared, matched, and transmitted to the applicable car owner railroads. It is this process that is being challenged by the Organization.

Mainly, the Organization contends that prior to January 1, 1983, standard interchange reports were compiled in the Carrier's Data Center. These reports were also mailed, using printed labels, to certain locations which required the decollating and bursting of the reports.

The Carrier, in its simplest form, states that the change it instituted after January 1983 represents a change in the format of the interchange reports; it states that the data is now kept on microfiche instead of paper. Thus, the Carrier contends that it has availed itself of modern technology to take advantage of a work-saving method. It contends that the work of decollating, bursting and mailing of the reports, formerly performed by a Data Center Clerk has been eliminated, rather than being transferred to the AAR computer as alleged by the Organization.

The Board has examined the complete record. It also has given full consideration to the well-stated arguments of both advocates. We conclude from this review that the relevant events leading to this claim and the key issues in this matter are substantially similar to those resolved in Third Division Award 26942, involving the same parties. Accordingly, this Board will again associate itself with the position that resolution of disputes between the same parties concerning the same basic issues should not be disturbed unless it is determined that the initial Award was palpably erroneous. We do not find this to be the case in the immediate claim.

With respect to damages, clearly some work opportunity was lost as a result of the Carrier's action. The Organization's assertion of fifteen (15) minutes per day was not substantially challenged on the property. Therefore, on the basis of lost work opportunity, we also sustain Part 2 of the claim; however, the claim is sustained at the straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 27094, DOCKET CL-26349  
(Referee Muessig)

The Award in this case is unsupported by the facts. The Carrier tied into the AAR System in 1977. Under that system the interchange reports were printed out on paper at Carrier's data center where they were removed from the printer, separated and mailed by Carrier's computer operators. No claims were made based on these facts in 1977.

In 1983 Carrier substituted computer generated microfiche records for printed records. That was the only change that occurred in 1983.

Claim was presented in 1983 based on removal of the work of handling interchange from Carrier's employees for performance by AAR personnel.

The removal of work, if any, occurred in 1977, not 1983. In 1983 only the format of the print-out changed (from hard copy to microfiche) which had nothing to do with the AAR.

The Award in this case is based on the factual occurrence in 1977, not the 1983 occurrence. Since the instant claim was not presented until 1983, well beyond the sixty (60) days contained in the time limit on claims, the claims were barred and should have been dismissed. Since the Board failed to dismiss this claim because it was not timely filed, we dissent.

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