

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

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10072) that:

1. Carrier violated and continues to violate the effective Clerks' Agreement when, on or about November 1, 1984, and thereafter, it required and/or permitted employees not covered by such agreement to perform data processing work reserved to employees covered thereby;

2. Carrier shall now compensate the senior furloughed employee on Seniority Roster No. 1, and/or his or her successor or successors in interest, eight (8) hours' pay at the straight time rate of a computer operator position for November 1, 1984, and for each and every Monday through Friday 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.

The significant events leading to this claim arose sometime in early or mid 1984 when three non-bargaining unit employees in the Carrier's Marketing Department (the General Agent, an Analyst and a Statistical Analyst) received and began using an IBM personal computer. The Carrier essentially asserts that the three employees use the computer to perform their regular duties of preparing statistical analyses and that, for the most part, the new computer replaced a smaller calculator which has been used for years by these employees.

The Organization principally contends each time a non-covered employee performs computer operator or input/output functions with such a computer, a violation occurs because this work accrues to its craft.

At the outset, the Board observes that a number of issues, contentions and matters have been raised for the first time in the Submissions to this body. Consequently, these will not be considered.

With respect to those matters properly before us for consideration, the Carrier alleges a violation of Rule 28 1/2, contending that the claim was not presented within sixty (60) days of the date of the event precipitating the claim itself. We agree with the Organization that the particular facts and circumstances flowing from the on-the-property handling of the case, that this is a continuing claim and properly before us on its merits.

Clearly, issues, as those presented herein, are difficult for both parties. The Organization is deeply concerned about the potential for the erosion of duties or activities which it believes legitimately belongs to its craft. On the other hand, there are equally legitimate reasons for the Carrier's decision to take advantage of labor saving devices in order to operate in a more efficient manner. While there are some peripheral issues, the fundamental question is whether the work itself, i.e., the tasks that make up the position, fall within the scope of the Organization's activities. The key issue does not focus on the mere installation or operation of the computer. In its simplest terms, the question is whether or not these three non-bargaining unit employees are performing the same work as before.

We understand and have carefully considered the well-stated arguments advanced by the Organization on the property and as skillfully presented before this Board by its advocate. However, these arguments cannot overcome the clear evidence that the work performed in the Carrier's Marketing Department prior to the installation of the computer has not been changed. In the past, a pencil, paper and calculator were used by the three employees. Now a computer is also being used by these same persons to perform the same work. In effect, the new computer is simply a labor-saving device that is not prohibited by the Agreement.

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 17th day of May 1988.

The Majority incorrectly opted for the Carrier's argument that Management personnel in Marketing Department always prepared statistical data when the Carrier's own job bulletin establishes that preparation of statistical data reports is work coming under the scope of the Agreement and has been for at least twenty-four plus years.

Without ever actually saying it, the Majority concluded that the work in dispute is an exception to the rule. Carrier made an assertion of an exception to the Rule, but failed to offer conclusive evidence. This Board has repeatedly stated that assertions are not evidence and that the burden of proving an exception to a rule rests on the party asserting it. There has been no showing in this instance of an exception.

The Carrier took the position that the IBM Personal Computer is similar to a calculator, or a telephone, and that because it's smaller and less complex to operate than some larger type computers it is somehow excepted from the Agreement. The size and configuration of a piece of equipment is not the determining factor in whether or not the work performed is protected by the Agreement. The Scope Rule in question has been found to be a "position and work" Scope Rule twenty plus times in the last ten years. Once by the Neutral in this instance in Third Division Award No. 26452. The Scope

LABOR MEMBER'S DISSENT TO
AWARD NO. 27098, DOCKET CL-26900
(REFEREE MUESSIG)

The Majority Opinion has erred in Its decision to deny when it states:

"...Now a computer is also being used by these same persons to perform the same work. In effect, the new computer is simply a labor-saving device that is not prohibited by the Agreement."

The aforementioned comments ignore the factual record presented, wherein it was shown that Carrier Officers, not covered under the Agreement, operated a computer for the purpose of data processing, work which has been historically and exclusively reserved to clerical employes. The preparation of statistical reports for marketing analysis has been clerical work for many years. Proof of that fact is found in Employes Exhibit "H", which is a bulletin dated October 12, 1964, regarding a position titled "Stenographer Statistician" in the Traffic Department now called the Marketing Department. The duties were as follows:


"Stenographer and typist, general, including transcribing from dictaphone machine. Comptometer operator. Maintain files, records and statements in connection with traffic research and industrial development. Tabulate traffic data and prepare statements. Other duties as assigned." (underlining our emphasis)

Rule in question even goes a step further than most
"position and work" Scope Rules when it states:

"Whenever any mechanical device used
for handling, duplicating, recording,
transcribing, transmitting or receiving
written, typed, printed, graphic or
vocal communications, reports or records,
or any combination of these, within the
same or between different cities, is
utilized for the accomplishment of work
heretofore performed by employees subject
to the scope of this agreement, such
mechanical devices shall be operated by
employees covered by this agreement."
(underlining our emphasis).

The record demonstrates that the work in dispute was
performed manually by clerical employees since at least
1964, thus it is protected work, which should have
flowed with the Clerks when being done on the computer.
The Majority Opinion correctly stated, in part, that
various employees manually did this work before the
computer. Their error came in recognizing who the
proper people were that did the work prior to the
computer.

Award 27098 is based upon unsubstantiated assertions;
and, because of such, it is palpably in error and carries
no precedential value.



William R. Miller,
Labor Member

May 26, 1988
Date