

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(CL-10095) that:

1. Carrier violated the Clerks' Rules Agreement when it allowed officials not covered by the Agreement to perform the work of reporting the activities of Mechanical Department forces into the computer; such action being in violation of Rules 1, 3, 5 and 54 of the Agreement (Carrier File 205-5971).

2. Carrier shall now be required to compensate Clerk L. Lackey for eight (8) hours pro rata rate of \$97.90 per day beginning December 24, 1985, and continuing each day thereafter until violation is corrected."

FINDINGS:

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

The carrier or carriers and the employe 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.

As Third Party in Interest, the American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but chose not to intervene.

In its Claim letter of February 24, 1985, the Organization stated it had been brought to its attention that the Carrier's Assistant General Foreman was:

"putting into the computer the Caboose Situation report. The Delays on Caboose Report. The 5:00 A.M. Morning Report.

It also contended:

"The repair track switch list is being input by the car foreman. Foreman Smith lines up each morning how these rails stand."

This, according to the Organization, is "Clerk's work." In support of its position, the Organization submitted a memo from the Carrier's General Car Foreman dated February 12, 1985, in which he stated:

"Per telephone conversation this date, we are in need of a clerk on the third shift at the Repair Track, to handle following duties:

- Release second shift okay cars
- Update cars spotted on Repair Track after 3 PM
- Send Morning Report
- Send Train Yard report
- Send Caboose Reports
- Handle FRA report on 'Pulse' equipment
- Handle records on derailments in computer

This clerk would also handle entering time cards in the computer, which will be done by this department in the future. Clerk would also handle on cars set back and material shortages."

Carrier denied the claim on June 10, 1985, asserting:

"The records show that the Mechanical personnel are reporting only their work performance which does not violate the clerical agreement."

After appeal, the Carrier denied the Claim on August 21, 1985, writing in part:

"Employees represented by BRAC do not have the exclusive right, either by agreement or practice, to perform the functions here involved. As you know, all employees, including non-agreement employees, have a right to record and otherwise report their own activities, such as . . . employees of the Mechanical Department such as shop, car and diesel foremen While some clerks may have participated or otherwise assisted in the performance of these functions . . . they do not have the exclusive right to same.

In this instant case, Assistant General Foreman Smith was merely reporting the activities of Mechanical Department Forces which resulted in a

change in the bad order status of cars on the repair track Additionally, it is not a violation of the Agreement when a Mechanical Department employe gives a Caboose Situation Report or a Delays on Caboose Report when those reports reflect the results of Mechanical Department work being performed on cabooses."

After conference Carrier took the position that the reports at issue had:

"historically and traditionally been recorded with paper and pencil by the Mechanical Department General Foreman . . . the General Foreman has merely substituted various forms, paper and pencil, for a computer terminal."

In recent Third Division Award 27615, involving the parties dealing with and arising out of computerization of certain operations, the following language from Public Law Board No. 3735, Award No. 1 was quoted with approval:

"While the Clerks must zealously protect their work, the Scope Rule was not intended to allow clerical employees to expand their work jurisdiction at the expense of another craft . . . To assign Clerks to operate the CRT device to report car repair data would be tantamount to vesting the Clerks with work which Carmen have historically and traditionally performed on this property."

Contrary to the Organization we do not believe Rule 1, the Scope Rule, specifically reserves the work in question exclusively to the Clerks. Although the Organization argues Carrier has never denied the work has traditionally and historically been performed by its members we read the Carrier's August 21, 1985, letter differently. We note the Organization has submitted no evidence in support of its contentions and apparently relies upon the General Car Foreman's February 12, 1985, memo. We believe that memo falls far short of establishing that Clerks traditionally and historically enjoyed exclusivity with reference to the tasks referred to in its text.

As we conclude the Organization has not met its burden of establishing the work in question has been reserved to its members as well as for the reasons cited in the Awards quoted above, we must deny this claim.

Form 1
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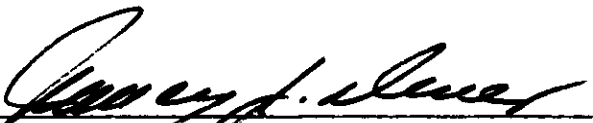
Award No. 27730
Docket No. CL-27215
89-3-86-3-290

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 2nd day of March 1989.

LABOR MEMBER'S DISSENT TO
AWARD 27730, DOCKET CL-27215
(REFEREE CLONEY)

The Majority Opinion has erred in the case at bar and has issued a decision which is contrary to the weighted authority on the subject within the industry. It has unfortunately chosen to compound the errors and mistaken reasoning of Award 27615 by following that illogical Award.

Award 27730 carries no precedential value and our Dissent filed in Award 27615 applies equally in this instance.

Award 27730 is palably wrong and requires strenuous dissent.

A handwritten signature in cursive script, reading "William R. Miller". The signature is written in dark ink and is positioned above a horizontal line.

Willaim R. Miller

Date: March 13, 1989