

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10186) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California, on March 23, and 30, 1986, when it required and/or permitted an employee that is not covered by the rules of the Agreement to perform routine schedule clerical work.

(b) A. Gonzales shall now be compensated for one call payment (three pro rata hours) at the rate of Car Clerk Position No. 6064 for March 23 and 30, 1986, in addition to any other compensation Claimant may have received for the days herein under Claim."

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.

In this dispute, the Organization asserted that Carrier violated the current Agreement when, on March 23, and 30, 1986, an employee not covered by the Agreement allegedly performed the "TKU" command of the OX (Operations Expeditor) system changing or listing industry number on rail cars TTWS 980087 in Track 1402 and TTWX 993640 in Track 1620. It pointed out that this command entailed the use of the Univac Computer and associated peripheral equipment such as a CRT. It was the Organization's position that said work was routinely performed by Agreement covered clerical employees, and its improper performance by the Assistant Manager RFO constituted a blatant impermissible breach of the Agreement. It cited Rules 1 (Scope), 2 (Grades of Work), Rule 5 (Establishment of Seniority), Rule 32 (Overtime and Calls) as controlling, and particularly developed detailed positional arguments with respect to the operational application and significance of Rules 2-E and 2-F. In essence, it

maintained that it was no longer necessary for work to be exclusively reserved to the members of the Organization systemwide in order to be covered by the Agreement. Rather, it observed that work assigned to a Clerk's position became the work of the position and thus was protected by the Agreement.

In rebuttal, the Carrier acknowledged that the Assistant Manager RFO used the Trackupdate function to check on data concerning car TTWX 993640 on March 30, 1986, but disclaimed that said official performed a Trackupdate. It also noted that it was unable to find any records for Car TTWX 993640 for March 23, 1986, nor any records for CAR TTWX 980087 for March 23, and 30, 1986. It argued that checking data by the use of the Trackupdate function was incidental to, and an integral part of the Assistant Manager RFO duties and, as such, not exclusively reserved to the Organization's craft. Further, it argued that the Organization has not furnished evidence that a Trackupdate was actually performed by the Assistant Manager RFO. It observed that in past negotiations, the Organization had specifically sought to amend Rules 1 (Scope) and 2 (Grades of Work) by attempting to expand the coverage of work protected by these Rules. It also referenced several recent Third Division Awards which have held that the Scope Rule was general not specific on this property. (See Third Division Awards 25003, 25125, 25571, 25695).


In considering this case, we concur with Carrier's position. Careful review of the voluminous documentary record does not establish that the Assistant Manager RFO actually updated data on the cars identified by the Organization. Also, we are not convinced that the Organization has fully shown how Rules 1 (Scope) and 2 (Grades of Work) were applied and violated. As we stated many times in prior Awards, we need concrete verifiable proof. (See Third Division Awards 13741, 18515, 18941). As the moving party, the Organization must present evidence to affirm its position. The record herein is bereft of such needed probative substantiation and accordingly, we must deny the Claim.

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 4th day of May 1989.