

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10317) that:

1. Carrier violated and continues to violate Rule No. 1, among others of the April 1, 1973 Master Clerical Agreement, as amended, when on May 8, 1987, it removed the duties and work of the Stockkeeper from the Scope of the Master Agreement and permitted or required supervisory non-contract employees (General Foreman and Gang Foreman) and employees of another craft (Carmen) to perform the duties and work listed in the statement of facts, duties and work that have been traditionally and historically performed by the clerical employees covered by the Scope of the Master Clerical Agreement at Columbus, Ohio.

2. Therefore, Carrier shall now be required to compensate the senior idle clerical employee eight (8) hours at the punitive rate of \$12.3971 per hour (rate of Stockkeeper) to include any and all subsequent wage increases for each day commencing May 8, 1987, and continuing each day thereafter until the duties and work of the Stockkeeper are returned to the coverage of the Master Clerical Agreement."

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 were given due notice of hearing thereon.

The significant events leading to this claim began when the Carrier abolished a position of Stockkeeper at Columbus, Ohio, effective on May 8, 1987. It announced at the same time that the remaining work of the Stockkeeper position would be assigned to the Lead Clerk of the Mechanical Department in Columbus.

The basic thrust of the claim before the Board is the contention that, rather than assign the remaining Stockkeeper work to the Lead Clerk, the Carrier actually assigned it to supervisory employees and employees of the Carmen craft.

The Board notes that the Organization has introduced for the first time material and arguments that were not presented on the property. As such, these are inadmissible and will not be considered in our deliberations.

The parties, in pursuit of their respective positions, have established a lengthy record on the property. This record, as well as the submissions which served as the vehicle to present the case to this body, includes a number of issues, and each have been expanded to various degrees. In turn, this has opened up various ramifications that actually, in some instances, are only marginally germane and, in most instances, are not material to the basic dispute. We have not discussed these matters because no useful purpose would be served.

With respect to the essentials of this dispute, the Carrier has advanced procedural arguments which mainly contend: (1) that the Organization failed to meet its contractual time limit obligations and; (2) that the claim lacked the essential elements and, thus, deprived the Carrier of its ability to defend itself. We find the Organization's arguments it gave on the property more persuasive. Therefore, this claim is properly addressed on its merits.

While we understand the Carrier's position as reinforced by its skilled advocacy before the Board, it cannot overcome the clear evidence established on the property that shows that for a period of time, the duties of the abolished Stockkeeper position were performed by other employees who were not within the craft. This evidence shows (and here we mainly rely upon the Carrier Supervisor's statements which are corroborated by the Lead Clerk and the statements of others) that the essence of the abolished Stockkeeper duties for the period May 8, 1987, to July 1, 1987, were performed by non-clerical personnel.

Accordingly, the next question is whether the Carrier has violated the Scope Rule. The Scope Rule applicable here is Rule 1 of the April 1, 1973 Clerical Agreement, as amended. That Rule has been held to be a "Position and Work" Scope Rule as contrasted to a General Scope Rule. It furthermore has been held that the Rule protects the duties of the position, even though, as in this case, some of the duties may include shared work.

In view of all of the foregoing, Part 1 of the claim is sustained; Part 2 of the claim is sustained for the period of May 8, 1987 to July 1, 1987 at the pro rata 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. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.

CARRIER MEMBERS' DISSENT
TO
AWARD 28457, DOCKET CL-28596
(Referee Muessig)

The decision of the Majority to sustain the Organization's claim for the period May 8, 1987 to July 1, 1987, is based upon the erroneous conclusion that the duties of the abolished stockkeeper position were performed by non-clerical personnel.

The record before the Board reveals that prior to abolishment of the stockkeeper's position, Carrier found that duties of a clerical nature performed primarily by the stockkeeper amounted to just over one (1) hour per day, work of loading/unloading historically performed by other employees together with the stockkeeper amounted to two to three hours per day, and the remainder of the day consisted of work that was unnecessary and could be eliminated.

Upon abolishment, the remaining clerical duties primarily performed by the stockkeeper were distributed to the position of lead clerk, Mechanical Department, the loading/unloading work was distributed to employees such as laborers and car repairmen in other departments and the remaining unnecessary work was eliminated.

The claim which was the heart of the dispute in this case quite simply alleged that all prior work of the stockkeeper position was being performed by other than clerks in violation of the Scope Rule.

The Award makes a distinction between the period of time before and after July 1, 1987. During the period May 8, 1987 until July 1, 1987, a supervisor in the Mechanical Department instructed and assisted the lead clerk in learning the clerical duties previously performed primarily by the former stockkeeper position. A clerk performed those duties both before

(stockkeeper) and after (lead clerk) May 8. The only difference involved in the period after May 8 was that the clerk to whom the duties were assigned was being trained by a supervisor. The "clear evidence established on the property" which was referred to by the Majority in the sustaining portion of Award 28457 is found in both parties' exhibits and reads:

During the approximately two month period following May 8, 1987, Gang Foreman Wynn worked with Lead Clerk Honaker, assisting him in learning the ordering and receipting of material.

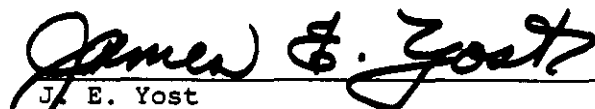
Additionally, the statement from Lead Clerk Honaker dated March 2, 1988, indicated he disagreed with signed statements of other clerks that supervisors and employees of other crafts were performing "stockkeeper duties."


Clearly, the Majority in reviewing the facts failed to recognize the training period for what it was. In sustaining the claim for that two month period, the Majority has ignored the fact that an employee covered by the Agreement was assigned the duties in question and was performing same while being trained. In fact, the only significance of July 1, 1987 as it relates to the facts of this claim is that a supervisor discontinued training the lead clerk on that date. Nothing else changed. The lead clerk continued in primarily performing the clerical duties of preparation of paper work to support the ordering/receipting of certain material, while employees in other crafts continued the loading/unloading and handling of material and the unnecessary activities remained eliminated.


It is clear that the sustained payment for the period May 8 to July 1 was based on a narrow misconception that a supervisor was exclusively


performing clerical duties instead of training the lead clerk. More importantly though, the performance by others of the remaining work after July 1, which had always been performed to some degree by others, was not found to be a violation of the Scope Rule. The Majority was therefore consistent with previous Awards in dealing with application of the Scope Rule on this property in that it only sustained the claim for that portion of the work it perceived to have been exclusively performed by the Supervisor. It confirmed that shared work of a position may be performed by others without violation of the Agreement.

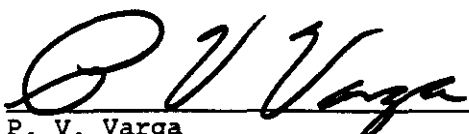
For the reasons set forth above, we vigorously dissent to the sustaining portion of Third Division Award 28457.


J. E. Yost


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga