

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10177) that:

1. The Carrier violated Rules 1, 2, 37 and Appendix E among others of the Schedule Agreement when it directed work, computer programming, which is covered by the Agreement, to be performed by individuals outside the coverage of the Agreement.
2. The Carrier shall now be required to compensate J. M. Lyle for eight (8) hours pay at his overtime rate of pay for Friday, April 25, 1986, which shall be in addition to any other amounts he may have received for this date."

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 employes involved in this dispute are respectively carrier and employes 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.

Claimant held the regularly assigned position of Programmer-Analyst. On April 25, 1986, the Carrier installed a software package that it had purchased from an outside contractor. The outside contractor along with the Assistant Auditor programmed the computer after the Claimant completed his shift.

The Organization argues that the Carrier violated the Agreement and Claimant is due overtime payment. It is the Organization's position that the work of programming the computer has historically been performed by Clerks on the Carrier. The Organization maintains that programming is work belonging to the Clerks and protected by the Agreement.

The Carrier denied the Claim arguing that Clerks have never exclusively performed programming. The Carrier further argued that programming had been performed for many years by supervisory and other personnel not covered by the Clerk's Agreement. It is the Carrier's position that it violated no part of the Agreement or the National Agreement of April 15, 1986.

The Board has reviewed the full range of issues raised on the property, as well as the Agreements, Ex-Parte Submissions and Rebuttal Briefs. As in all cases that reach this Board for resolution, only arguments and issues raised and developed on the property can be properly considered.

The burden of proof lies with the Organization. Rules 1, 2 and 37 do not include language which prohibit the Carrier from the programming complained of in the instant case. The Organization has also failed to prove that the work has been historically and exclusively performed by the Clerks. The Carrier has presented contrary evidence. Job bulletins do not prove the exclusive right to performance, but only that said work is performed as a part of the position.


In the instant case, the Agreement and evidence properly presented do not carry the Organization's burden of proof. There is no basis in the evidentiary record to conclude that the Carrier is prohibited from having other than employees covered by the Agreement from performing computer programming. Exclusivity has not been proven in these instant circumstances.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bower - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.