

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 Brotherhood
(GL-10340) that:

(a) Carrier violated the Agreement at Kansas City, Kansas, beginning September 16, 1987, when it abolished the positions of East Bowl Inventory Clerk, West Bowl Inventory Clerk, and Turner Inventory Clerk and the relief assignments which protect their rest days, permitting and/or requiring Assistant Trainmasters not subject to the current Clerks' Agreement, to perform routine clerical work; and

(b) The work which was removed from the scope and operation of the Agreement shall now be restored to the employees covered thereby; and

*(c) The occupants of said positions at the time of abolishment, and/or senior off-in-force-reduction employee in the event of the occupants' retirement, resignation, or other removal from the employment of the Carrier, shall now be compensated eight (8) hours' pay at the pro rata rate of their positions including subsequent wage increases which otherwise would have occurred, for each work day commencing September 16, 1987, continuing until such violation ceases, in addition to any other compensation received for these dates.

*NOTE: To be determined by a joint check of Carrier's records."

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 basic facts of this case are set forth as follows: On September 4, 1987, Carrier abolished 52 Inventory Clerk positions at the East Bowl, West Bowl and Turner sites. The Organization's Division Chairman conversed with the Assistant Superintendent on September 29, 1987, and requested the opportunity to discreetly observe the operations at the aforesaid locations to determine the exact distribution of the duties previously performed by the Inventory Clerks. The Assistant Superintendent was not amenable to this request and thus by letter dated September 30, 1987, the Division Chairman apprised the Superintendent of this conversation and reiterated his request to conduct such observations. By letter dated October 1, 1987, the Superintendent stated that he would be most happy to meet with the Division Chairman to precisely advise him of the disposition of the duties of the abolished positions. The parties met on October 8, 1987, and discussed the work being performed at the three locations. By letter dated October 14, 1987, and addressed to the Superintendent, the Division Chairman reviewed in great detail the summary of the conference discussions and concluded with the following proposal:

- "1. A series of checks to be made on random dates, prearranged on the morning of each check, by myself and an agent of your choice.
2. These checks shall consist of examining pre-printed lists of tracks which are to be switched within the yard and a comparison made when the tracks are pulled by the respective East Bowl and West Bowl Towers.
3. I recommend the checks take place over a two-week period, beginning Monday, October 26, 1987.
4. Seven (7) checks be made, each check to include ten (10) tracks within the yard."

The Division Chairman also noted:

"For the sake of expediency, I intend to present a claim to you early next week stating the nature of our grievance and the position of the Organization. Naturally, if you agree to my proposal we will not be able to conclude our joint check before the claim reaches you, so the results of the joint check will necessarily follow. Please advise me prior to Friday, October 24, 1987, if you agree to my proposal."

The Division Chairman filed a claim dated October 20, 1987, wherein he asserted that Assistant Trainmasters were performing work previously performed by the abolished Inventory Clerk positions. He delineated this work as:

- "1. Making roll-by checks, from preprinted lists of involved tracks, on all yard moves within the area surrounding their respective areas to ascertain if cars are in proper sequential order in the computer yard inventory.
2. Correcting the inventory to reflect switching or proper sequential order of cars after roll-by check utilizing the 'FSS' function (or other manipulative commands) of the OX System. Exercising an option of the 'FSS' function to transmit lists of completed outbound trains (and inter-line transfers) to the Regional Freight Office.
3. Printing advance lists of inbound trains for future switching utilizing the 'DTRS' or 'PRELIST' functions of the OX System.
4. Examining the inventory of cars on track by either printing the track (utilizing the 'PRTRK' or 'DTKK' function) or by utilizing the 'CKTB' function of the OX System to check for misroutes, misblocks, improperly placed dangerous or hazardous cars, excessive tonnage, bad orders, etc.
5. Transmitting lists of cars on track to printers at other locations to advise of inter-yard switching and to verify the sequential order of cars on track utilizing the 'PRTRK' or 'DTKK' function of the OX System.
6. Recording the activities of switch engines within the jurisdiction of the respective yards utilizing the 'STATS' function of the OX System.
7. Deleting East Bowl tracks from the Honeywell Computer utilizing the 'DI' function after tracks are switched.
8. Printing scale tickets on cars humped into the East Bowl utilizing the 'WEIGH' function of the OX System.
9. Printing switch documents for switch crews on cars going from yard track to industry track and from industry track to yard track utilizing the 'WO' function of the OX System."

He charged that Carrier violated Rules 1, 2, 4, 5, 6, 14, 25, 32 and 59 of the Controlling Agreement, when Carrier required or permitted Assistant Trainmasters to perform work which had historically been performed by clerks at Kansas City. More pointedly, he asserted that Carrier violated Rule 2 when it abolished the positions under claim, removed the work from the scope and operation of the Agreement and transferred such work to employees not covered by the Agreement. Rules 2-E and 2-F are referenced as follows:

"2-E. Positions or work within Rule 1 - Scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of the rules of the agreement.

2-F. When a position covered by this Agreement is abolished, the work assigned to same which remains to be performed will be reassigned to other positions covered by this Agreement, unless such reassignment of work would infringe upon the rights of other employees."

By letter dated November 1, 1987, the Superintendent responded to the Division Chairman's October 14, 1987, letter and declined the request for a joint check. He wrote in part,

"Your request to make a joint check of the yard at random intervals is declined. It is our position that even were an employee of another craft to check a cut of cars against the list he is working with, that action does not violate the terms of your Agreement, so there is no reason to make such a check."

By letter dated December 10, 1987, the Superintendent denied the October 20, 1987, claim and made the following comments:

"It is Carrier's position that no work is being performed by the Assistant Trainmaster IIs in the towers which is exclusive to the clerical craft. As informed in conference and by my October 30, 1987 letter, roll-by checks from preprinted lists have been performed historically by other crafts on this property and is not an exclusive clerical duty.

As far as the computer commands or functions referred to in your claim, Assistant Trainmaster IIs system-wide perform these functions daily as an integral part of their assigned duties and these functions have never belonged exclusively to clerks.

You were informed that Assistant Trainmaster IIs were not printing scale tickets via the 'WEIGH' function. Also, in regards to your comments in Item 9 concerning switch documents generated via 'WO' command you have already filed a claim regarding this matter which is on appeal at this time.

Your argument concerning Rule 2-F is without basis account you have misinterpreted said rule."

This position was rejected by the Division Chairman on January 11, 1988, and a detailed response was submitted by the General Chairman on February 4, 1988. The General Chairman reiterated the basic position advanced by the Division Chairman and referenced observations made by several clerks. He wrote (in pertinent part):

"Assistant Trainmasters are making roll-by checks, from preprinted lists of involved tracks of all yard moves within the areas encompassed in this claim. While it is extremely difficult to support this fact in the militant labor-management atmosphere that exists in Kansas City, the statements of clerical employees Kenneth M. Kennedy and Jesse J. Rocha (attached) are clear evidence that such is the case. On sixteen occasions, in roughly a two month period, Mr. Kennedy and Mr. Rocha 'observed Asst. Trainmasters by-checking cuts of cars from pre-printed computer list(s).'

It is noteworthy that no special effort was made to obtain this information. These observations were made by Mr. Kennedy and Mr. Rocha only while performing their duties as Auto Messengers. (See attached letter of instruction dated September 10, 1987 from Manager G. W. Howell.)

In Superintendent Nash's letter of December 10, 1987, in which he denied this claim in its entirety, he contends that:

'... no work is being performed by the Assistant Trainmaster IIs in the towers which is exclusive to the clerical craft. As informed in conference and by my October 30, 1987 letter, roll-by checks from preprinted lists have been performed historically by other crafts on this property and is not an exclusive clerical duty.

As far as the computer commands or functions referred to in your claim, Assistant Trainmaster IIs system-wide perform these functions daily as an integral part of their assigned duties and these functions have never belonged exclusively to clerks.'

Nothing could be further from the truth. Case in point, Kansas City clerical employee, A.L. Morgan's letter of January 21, 1988 (attached) supports the facts in this claim and refutes Superintendent Nash's contentions. Mr. Morgan's letter discusses the work under claim, examines the history of same, and emphatically states:

'Through the past 24 years, this type of work was done only by clerks!'

And such has been the case system-wide. The work under claim is clerical in nature, has been traditionally performed by clerical employees, and can be removed from the scope and operation of the Agreement only by negotiation."

By letter dated March 30, 1988, the Carrier denied the General Chairman's February 4, 1988, appeal letter and premised its denial on several considerations. The Scope Rule on the property was a general Rule and did not include grades or types of work performed by clerks. In effect, Rules 1 and 2 were separate Rules. Further, the Carrier pointed out that in the Organization's March 29, 1984 Section 6 Notice, the Organization sought to obtain exclusive right to operate all CRT equipment (without success). The Carrier noted that trainmen and switchmen performed roll-by checks of cars on a system-wide basis and observed that the Organization requested a change in Rule 2 whereby train and yard checking and verification be deemed clerical work. (Section 6 Notice of November 30, 1977). It acknowledged that clerks located at Kansas City used the "FSS Command" in the computer to flat switch cars in the computer inventory, but asserted that Assistant Trainmasters I use this command on a systemwide basis and referenced Award 1 of Public Law Board 2555 as precedent authority. The Carrier also took exception to Clerk A. L. Morgan's January 21, 1988 letter and again emphasized that Rule 1 (Scope) was a general Rule. It wrote, in part:

"Even though at Kansas City clerks may have solely performed various duties in the past, this argument will not prevail when at numerous other points employees other than clerical employees perform the same work. Accordingly, clerical employees do not have exclusive rights to the work in question. Your

statement that the work Mr. Morgan described as having been performed 'only by clerks' is the case system-wide, is totally false and you are well aware of this. Such work has been performed by clerks at certain points but, you are aware, the same work has been and is being performed at numerous locations by non-clerical employees. This long established past practice on this property is a major obstacle to your argument and one that you definitely cannot overcome."

By letter dated November 7, 1988, the Organization referenced the on-situs conference held on October 20, 1988, and noted the proofs submitted by the Organization to support the claim. These included statements from employees at various locations across the system testifying that they did the work disputed herein, advertisement bulletins with job descriptions from various locations across the system and examples of the type of work performed. The Organization acknowledged receipt of statements from supervisory personnel supportive of Carrier's position and noted the claim was not for sidings or locations where clerical personnel were never located or for industrial spurs or foreign trackage. It emphasized the claim centered on who is contractually entitled to perform the work of maintaining yard inventories, that is, the inventory of cars within the designated yard limits of a station. The Organization also protested ("vigorously") Carrier's refusal to allow a joint check of the operation at the location of the dispute.

The dispute was thereafter submitted to this Board.

In the Organization's Submission, the Organization set forth the work assertedly performed by the Assistant Trainmasters and noted that said work was protected work under Rules 1 and 2 - E and F of the Agreement. It also reproduced the exact language of those portions of Rule 32 Overtime and Calls and charged that Carrier violated this Rule when it failed to call Claimants (occupants of the abolished positions) to perform this work. It maintains that it need not demonstrate system-wide exclusivity vis-a-vis supervisory (non-exempt) personnel and cited Award 8 of Public Law Board No. 1605 as supportive authority. It also cited Award 66 of the same Board and Third Division Awards 13236 and 15461, et al. It noted that of the many pieces of evidence submitted to Carrier on the property when the claim was being progressed, the January 10, 1988 letter from Mr. Steve Watson (his inventory clerk's position was abolished on September 4, 1987) was directly on point since it set forth in specific detail the history of this dispute. It acknowledged that Carrier submitted numerous statements from Assistant Trainmasters across the system attesting that they performed certain portions of

the work, but observed that it submitted an equally voluminous amount of contrary statements. It reviewed the text of the exchanged on-situs correspondence noting the points in dispute and observed that the Organization had established more compelling proof. These proofs included statements from clerical employees at various locations testifying they historically performed roll-by checks of the yard and advertisement bulletins with job descriptions. It also noted that the Log of Work Performed at the East Bowl Tower for the period September 1, 1987, through September 16, 1987, showed that clerks performed by-checking duties, but asserted that it was difficult to ascertain how much time was actually spent by-checking, since Carrier refused to conduct a joint check. It further pointed out that of all the statements submitted by Carrier, only three Assistant Yardmasters "at rather" remote locations testified they made roll-by checks.

In its Ex Parte Submission, Carrier reviewed its rationale for abolishing the 52 Inventory Clerk positions and reiterated its on-situs position that the complained of work was not assigned exclusively to Inventory Clerks and/or any other clerical positions at Kansas City. It asserted that roll-by checks of cars had been performed by trainmen and switchmen systemwide for years as part of their normal duties and noted that Assistant Trainmasters I merely verified that the cars switched via computer were actually in the train or out of cars. This work was integral to the Assistant Trainmasters duties. It noted that Assistant Trainmasters I used the FSS Command in the computer to flat switch cars in the computer inventory and asserted that at almost all locations they used this command from the time the CRT's were first installed. Carrier recognized that Kansas City was the one location where clerks started to perform this duty when the CRT's were installed, but it argued this did not entitle clerks to systemwide exclusivity. It noted that Items 3 through 7 and 9 on the Organization's claimed work list were computer functions like the FSS and Assistant Trainmasters had the right to perform them in connection with their duties. It maintained that none of these computer functions was exclusively performed by Inventory Clerks. As to Item 8, it flatly denied that Assistant Trainmasters I were using the weigh command to weigh cars. It further observed that in view of prior arbitral awards involving the same parties and Rules 1 and 2, particularly E and F, thereof, Rule 1 was deemed to be a general scope rule, thus necessitating a demonstration of systemwide exclusivity. (See Award 1 of Public Law Board No. 3296 and Third Division Awards 25003, 25125, and 27330.) It also noted that the Organization sought to obtain additional protective language via the Organization's November 30, 1977 Section 6 Notice, wherein Rule 2A would be amended to include the language, "train and yard checking including roll-by checking and verification." It noted that the complained of work was an integral part of the duties of the Assistant Trainmasters I in the Towers and further that said work was performed by the Assistant Trainmasters prior to the abolishment of the Inventory Clerk positions. It also pointed out that the total amount of time a clerical employee performed the FSS function was approximately 3 1/2 hours a day or about one hour per shift. It noted that the advertisement bulletins submitted

by the Organization applied to locations where Assistant Trainmasters were not employed, particularly around the clock, and, as such, the inventory was maintained by other employees. In this connection, it observed that there were numerous locations on the system where Assistant Trainmasters performed this exact work. In sum and substance, it argued that since the Assistant Trainmaster was responsible for the inventory of the yard and the switching of cars within the yard, the maintaining of inventory was immediately linked to and an integral part of his regular duties.

In considering this case, which involved a docket the size of an unabridged dictionary, the Board finds for Carrier's position. There is no dispute that part of the work of the abolished Inventory Clerk positions was assigned to the Assistant Trainmasters I at the three Kansas City locations and no dispute, at least, as evidenced by prior Board rulings that the parties Scope Rule (Rule 1) is general and not specific. The negotiating history of the parties for successor collective agreements shows that the Organization sought more specific protective language vis-a-vis the type of work at issue herein. Since this Scope Rule does not define or reserve work and since there is a distinction between work which was performed and work within the four corners of the Scope Rule, the Organization of necessity, must demonstrate systemwide exclusivity.

As a significant part of its proof, the Organization submitted numerous statements from clerks across the system attesting that clerks performed this work, particularly roll-by checks of cars and ancillary data such as advertisement bulletins showing that the disputed work was integral to the advertised clerks position. It also argued in its Ex Parte Submission that it need not establish systemwide exclusivity with respect to exempt positions.

On the other hand, Carrier submitted numerous statements from Assistant Trainmasters across the system asserting an opposite position and also addressed each of the specific job functions claimed by the Organization. Its affirmative defense was as detailed and as comprehensive as the Organization. In weighing, however, these respective well articulated positions within the context of the Rules cited, specifically Rules 1, 2E and 2F, the Board cannot conclude that Carrier violated the Controlling Agreement. The Organization has not met the exclusivity test. The Organization's contention that it need not establish exclusivity as against exempt positions is new argument and not properly before the Board under Board Circular No. 1.

A W A R D

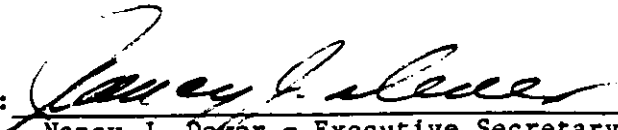
Claim denied.

Form 1
Page 10

Award No. 28884
Docket No. CL-28711
91-3-89-3-92

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.