

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10246) that:

1. Carrier violated the Clerks' Rules Agreement expressly Rule 1, and any associated Rule, contained therein when it allows employees represented by the Brotherhood of Railway Carmen to input information into the Car Shop computer as well as Data Entry work in general.

2. Carrier shall now be required to compensate Mr. J. J. Ingram, Jr., Head AAR Clerk at his overtime rate of pay for the dates and amount of time as follows:

1/27/87 - 7 hours	2/12/87 - 7 hours	3/04/87 - 8 hours
1/28/87 - 3 hours	2/13/87 - 8 hours	3/04/87 - 8 hours
1/29/87 - 8 hours	2/16/87 - 7 hours	3/05/87 - 8 hours
1/30/87 - 7 hours	2/17/87 - 7 hours	3/06/87 - 8 hours
2/03/87 - 7 hours	2/18/87 - 7 hours	3/09/87 - 7 hours
2/04/87 - 8 hours	2/19/87 - 7 hours	3/10/87 - 8 hours
2/05/87 - 8 hours	2/20/87 - 7 hours	3/11/87 - 8 hours
2/06/87 - 7 hours	2/23/87 - 4 hours	3/12/87 - 7 hours
2/09/87 - 7 hours	2/25/87 - 4 hours	3/13/87 - 8 hours
2/10/87 - 8 hours	3/02/87 - 2 hours	3/16/87 - 8 hours
2/11/87 - 9 hours	3/03/87 - 1 hour	3/17/87 - 8 hours"

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.

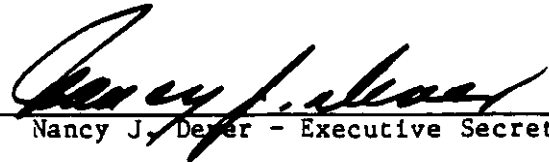
Parties to said dispute waived right of appearance at hearing thereon.

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Award No. 28907  
Docket No. CL-28329  
91-3-88-3-90

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.

LABOR MEMBER'S DISSENT TO  
AWARD 28907, DOCKET CL-28329  
(REFEREE DENNIS)

*A Dissent is required in the case at bar because the Majority Opinion has erred and issued a decision which is contrary to the facts presented on the property and the weighted authority on the subject within the industry as well as the Agreement.*

*The Majority has confused the issues and incorrectly determined that the clerical work in dispute was eliminated rather than transferred when in fact the opposite is true.*

*The facts of this dispute are the Scope Rule provides that the work of positions within the Scope of Rule 1 belongs to the employees covered thereby and nothing shall permit the removal of such positions or the work of such positions from the application of these rules subject to the exceptions hereinafter set forth in the basic agreement.*

*The Rule goes further than most Scope Rules within the industry as it also provides that when and where machines are used for the purpose of performing work of positions coming within the scope of the agreement, not previously handled by machines, or when a change in the equipment used for the performance of such work is made, such work will be assigned to employees covered by this Agreement, except as otherwise mutually agreed.*

*The Rule goes on to identify position and work in (d) (2) when it states:*

*"Clerical Workers. those who perform the work of writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work. Machine Operators (such as key punch machines, electronic or electrically operated dataprocessing machines, typewriters, calculating machines, bookkeeping machines, transcribing and transmitting devices and other similar equipment)."* (Underlining our emphasis)

*Prior to the installation of the computer machine at the office of General Car Foreman, Shops Springfield, Illinois, the Claimant was assigned to and performing duties of preparing Car*

Repair bills which is the work in dispute. That fact was unrefuted by the Carrier while the claim was still on the property when the Organization wrote the Carrier in our letter of July 20, 1987, wherein we stated:

*"It is to be noted that Carrier's Job Bulletin No. C-1-86 dated May 30, 1986, filed 013.297 wherein the position (held by claimant) was advertised by bids lists under Duties:*

*Has responsibility of preparing C&IM Car Repair Bills for foreign lines. Check all wheels applied on foreign lines and system for wheel guarantees, foreign line car repair bills, system billing repair cards and price same, defect cards for rebuttal, lading adjustment charges for rebuttal, repair cards for case duplicate charges from foreign line, car repair bills for owners and handling line defects and C&IM repair charges against accident reports. Compile various statistical reports, bad order reports, car report to A.A.R., output of car shops, system and foreign car report estimates and other miscellaneous reports. Post and check light weigh records, handled refrigeration reports, all A.A.R. billing matters and correspondence pertaining thereto, handle and distribute all A.A.R. data on Interchange Rules, Loading Rules, etc., analyze debit car repair bills, typing, minimum of 40 words per minute, arithmetic and working with figures required. Must be familiar with the operation of office machines, typewriters, calculators etc. Other miscellaneous duties as may be assigned.*" (underlining our emphasis)

*It is clear from the aforementioned that the work in question was assigned to the Claimant prior to the installation of the computer, thus those same duties flow with his position after computerization as well. The Majority would now ask us to believe that the Carmen are doing the same function as before and that technology has eliminated a portion of the clerical car repair billing function. That reasoning is incorrect. The Carmen's work has never had any function or purpose to do with car repair billing which the Carrier and the Carmen did not deny while the claim was on the property. All three parties acknowledged that car repair billing is a clerical function. That function has not been eliminated it has instead been transferred. The Carrier even admitted such which the Majority has ignored when they state on page 24 of their Submission the following:*

*"The Computer used is a small personal computer, which is not tied to any other mainframe, nor utilized for any other purpose except for car repair billing." (Underlining our emphasis)*

Contrary to the aforementioned argument the size of the computer is not important, but what is important is the purpose of its use. The admitted purpose in this instance is for car repair billing. Car repair billing is assigned only to clerks and in this instance the Claimant's position. Clearly the Claimant's duties have not been eliminated, but instead transferred. Third Division Award No. 26773 which deals with a similar size Carrier and personal computers with a like Scope Rule is directly on target and should have been followed by the Majority in this instance.

*It is clear from the record the work of car repair billing was transferred to Carmen rather than being eliminated. The Majority Opinion has reached this improper conclusion by using a simple devise, they ignored the highly restrictive language of a "position or work" Scope Rule and the unrefuted fact the Claimant was assigned and did the disputed work on the computers. By ignoring those facts the Majority has issued an Award which is palpably erroneous and cannot be accepted as dispositive of the issue at bar.*

*For the foregoing reasons Award 28329 carries no precedential value and requires strenuous dissent.*

William R. Miller

William R. Miller

9-10-91

Date September 10, 1991

CARRIER MEMBERS' RESPONSE  
TO  
LABOR MEMBER'S DISSENT  
TO  
AWARD 28907, DOCKET CL-28329  
(Referee Dennis)

All arguments set forth in the Labor Member's Dissent were presented to the Board and rejected. There is no need to reemphasize such rejection here.

Beyond that the Dissenter emphasizes Award 26773 "...should have been followed by the Majority in this instance." In addition to incorporating by reference the Carrier Members' Dissent thereto, attention is called to Award 27615 which also rejected the conclusions reached in Award 26773 as follows:

"It is true, as the Organization points out, that in recording their car repair information mechanically on the keyboard of the CRT, Carmen now perform work which was in the past performed by the Clerks. However, the core function of the Clerks' duties, which was to provide billing information, is now performed, not by the Carmen, but as an automatic function within the computer itself. In that regard, we disagree with the conclusions reached in Third Division Award 26773 wherein it is stated, 'While related to the duties of Carmen, the billing is not Carmen's duties and the purpose of their work has changed from recordkeeping to billing.' This Board is of the opinion that the billing work has been eliminated by the use of the computer, not transferred, and therefore no violation of a Scope Rule can result. Moreover, to the extent that Carmen now enter their car repair data into the computer rather than on paper, we find that the substance of that work, based as it is on the information from Form 2620-4, is Carmen's work. Here, a clerical step has been eliminated, and it is well-established that no scope clause violation can result. See Public Law Board No. 2470, Award No. 59 and Third Division Award 22832."

Award 28907, like Award 27615, is obviously better reasoned than Award 26773, and should be followed in disposing of future cases of this nature.

Carrier Members' Response to Award 28907  
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