Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29046
THIRD DIVISION Docket No. CL-29232
91-3-90-3-99

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10417) that:

(1) Carrier violated the Agreement, particularly Rule 1 (Scope) among others, when on or about October 28, 1988, it removed work in connection with inputting locomotive servicing data into the Carriers Computer by means of a CRT from covered employees and assigned it to employees not covered by such Agreement.

(2) Carrier shall now return this work to employees covered by the Agreement and shall compensate Mrs. R. J. Morgan for four (4) hours pay at the overtime rate of her Steno/Clerk position (Battle Creek Heavy Repair Shop) for each of three (3) shifts, seven (7) days per week, commencing October 28, 1988, and continuing for each subsequent shift and date thereafter that a like violation occurs at any point on the GTW Railroad."

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.

The International Brotherhood of Firemen and Oilers and the International Association of Machinists and Aerospace Workers were advised of the pendency of this dispute and declined to file submissions as Third Parties in Interest.

Prior to October 28, 1988, the Claimant's duties as Stenographer at the Battle Creek Shop Superintendent's office included entering data concerning locomotive inspections into the computer system. The data was obtained from a Form 625, which was prepared by mechanical employees at other locomotive servicing facilities and forwarded to Battle Creek, Michigan, for entry. During the period of time covered by this claim, the data was entered into the computer by mechanical employees at the various locations, rather than by the Claimant. The Carrier, apparently, made this change due to an inability to process the data on a timely basis. The Organization contends this action by the Carrier constituted an improper removal of work from the Claimant's position.

The evidence before the Board indicates the mechanical employees, when making their inspections, note certain information (e.g., odometer reading, fuel added, etc.) in personal notebooks they carry from locomotive to locomotive. Prior to this claim these notations were transferred to the Form 625. This was done either by the individual mechanics or by one mechanic who collected all the notes. The Forms were then sent to Battle Creek for processing. When computer terminals were installed at the various locations, the process of initially recording the information did not change. At the end of the shift, however, the data from the notebooks was entered into the computer by the mechanics. It appears that at least some of the mechanics first transferred the data to a Form 625 before making the computer entries. The Organization alleges this was on the recommendation of supervisory forces. The Carrier, however, avers it directed mechanics to discontinue completing the Form 625 when it discovered it was still being used.

The Organization argues work performed by employees under the scope of the Agreement may not be removed and performed by others without mutual consent. It bases this argument on the position the Scope Rule is a "position and work" Rule, rather than a general Rule. Such was the holding of Public Law Board No. 2189 involving these parties in Award No. 16. In that case, the Public Law Board held as follows:

> "Thus, the dispute herein devolves to the question of whether indeed work was removed from the employees covered by the Agreement in violation of Rule 1-g. There is no doubt that if work was removed from within the jurisdiction of employees covered by the Agreement, it would be a violation of Rule 1-g. This particular issue has been dealt with in numerous Awards of the Third Division as well as Public Law Boards. Among other Awards, Third Division 20839 provided as follows:

> ... with regard to the instant case we are in particular agreement with the following language which is applicable to this dispute, 'the weight of authority of the Third Division National Railroad Adjustment Board Case Law compels a finding that when the scope rule of an Agreement encompasses positions and work that work once assigned by a Carrier to employees within the Collective Bargaining Unit thereby becomes vested in the employees within the Unit and may not be removed except by agreement between the parties.'"

The Carrier argues it is the nature of the work and not the tool used which distinguishes the work of a particular craft and creates a potential scope rule violation. It asserts the substantive nature of the work involved is the reporting of locomotive servicing data. It is the technology, continues the Carrier, which has changed the instrument of reporting from the Form 625 to the computer.

While we agree with the Carrier's general premise, we conclude the nature of the work involved in this case is the entry of the data into the computer system. This is the work which was done by the Claimant before the change in procedures. Since then, the work has neither changed nor disappeared; it has simply been moved to be performed by others. It is exactly the same information being entered into the computer by the mechanics as was entered by the Claimant. The information is still generated by the mechanics making notations in their notebooks. The elimination of the intermediate Form 625 does not change the nature of the work. Therefore, we conclude the work of entering the locomotive inspection data was improperly removed from the Claimant's position and assigned to employees outside the scope of the Agreement. The Agreement was violated.

The Carrier has raised a timely objection to the measure of damages sought by the Organization. According to the Carrier, the amount of time consumed in entering the data would be approximately thirty (30) seconds per locomotive. The Carrier further avers its records reflect a daily average of 90 locomotives being serviced. The Organization, however, asserts the violation occurs on each of three shifts, seven days a week. In the absence of conclusive data, we will award the Claimant two hours pay at the pro rata rate for each date she has performed service during the period covered by the claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.

CARRIER MEMBERS' DISSENT
TO
AWARD 29046, DOCKET CL-29232
(Referee McAllister)

It is well settled in the railroad industry that any employee may use a computer, and the claim made did not seek to disturb that principle. In fact, in the Organization's brief to the Board in this case, they specifically stated that the Clerks were claiming only "the production work of inputting data." On page 8 of their brief, they went on to state that they were not arguing for the "exclusive rights to the use of computers, but rather exclusive right to the work of repetitious production input relative to compiling records."

With that in mind, the only way this Board could have sustained the claim in this case is if it had found, on the facts, that the work in question was repetitious production input. A review of the Award issued by the Majority in this case will show that the summary of the facts, which was correct, does not support the conclusion that the work was production work, and should not have produced a sustaining Award.

The Majority found that originally shop craft employees prepared written summaries of their work (Form 625 locomotive servicing report) which were then sent to claimant from many locations on the system. She input the data from those reports into the Carrier's system. The Majority went on to find that the current method of reporting locomotive servi-

cing data is for the shop craft employee who formerly prepared the Form 625 to input his information directly into the computer. Since no Form 625s are prepared, the production work of inputting stacks of them has ceased to exist. The Majority specifically found at Page 3 of the Award that the Form 625 was no longer used.

Nevertheless, the Majority went on to characterize the work in question as the inputting of locomotive servicing data, rather than the reporting of locomotive servicing data. This is the fundamental error in the Award. If indeed that were the correct statement of the work, then effectively any use of the computer would constitute work properly reserved to a clerk, and not even the Organization takes such an expansive position. The work which must be analyzed is the work of reporting locomotive servicing data and that work, whether using a pencil to fill out a Form 625 or entering information directly into a computer, is clearly and traditionally identified as the work of the shop craft employees.

Had this been a case of first impression for the Board, we might understand the confusion. However, the following summary of the history of similar disputes, all of which were presented to the Majority in this case, should establish for anyone reading this Award that the facts in this case supported a denial Award consistent with the precedent

on this Board and Public Law Boards throughout the railroad industry.

In Third Division Award 28907, the claim was denied when the Carrier eliminated its preprinted form for certain car repair data by having the shop craft employee enter raw data directly into the computer system. Significantly, the Majority stated:

> "The work of recording car repair information in this instance, whether by hand or by machine, belongs to the write-up man, a Carman...."

In Third Division Award 28097, no agreement was violated when management commenced entering data directly into the computer system. Significantly, the Majority held:

> "...In the past, a pencil, paper and calculator were used by management employees to prepare statistical analysis. At the present time a PC is being used by these same persons to perform the same work...."

In Third Division Award 27615, the Majority found no violation occurred when Carmen entered data directly into the computer system, which they formerly wrote on preprinted forms, eliminating the need for a clerk to perform that function. Significantly, the Majority stated:

> "...Here a clerical step has been eliminated and it is well established that no scope clause violation can result...."

In Third Division Award 27098, the Majority found no violation occurred when management used a computer to input data it previously generated by using "...pencil, paper and

calculator...."

In Third Division Award 26815, the Majority found no violation occurred when the Carrier changed the method of reporting and processing foreign car repair information by modifying a report, thus eliminating the need for a clerk to code the data. Significantly, it stated:

> "...Thus, the Carrier simply eliminated a duplicative, intermediate step in the processing of foreign car repair information...."

In Award 21 of PLB No. 4721, the neutral found no violation occurred when the Carrier required trainmen to enter information into the computer system regarding the crew and its activities. The trainmen contended this work was exclusive to the Clerks. The Clerks participated in the dispute contending that the work being done by trainmen was theirs exclusively. Significantly, the Board held:

> "This work was not contemplated as work being reserved to any craft, such as the TCIU. This is a technological advance being made in the industry which has been recognized in many awards as being permissible. The Board finds that the Carrier may require train and engine employees to relate their train information via a CRT."

In Third Division Award 25902, the Majority found no violation occurred when employees of one of the Carrier's shippers commenced entering data directly into Carrier's computer, instead of furnishing to the Carrier's clerical employees for data entry into the computer system.

The Majority in Third Division Award 25902 relied heavily upon Third Division Award 23458. Both Awards set forth the principle reinforced in Third Division Awards 28907, 28097, 27615, 27098, and 26815, as well as Award 21 of PLB No. 4721 cited above with the conclusion that:

> "...ample authority, with which we concur, establishes the proposition that a Carrier has the right to eliminate an intermediate step in the transmission, receipt and processing of information...it does not constitute a transfer of work...."

The above Awards were furnished the Majority in this dispute because they are on all fours with the instant dispute. In this dispute the Carrier merely eliminated a step in the transmission, receipt and processing of locotive inspection data - no Form 625 is prepared by hand. Shop forces continue to report the same information. The only difference is they now use a computer as opposed to a prepared form.

Each of these Awards was studiously ignored as though it did not exist. To sustain the claim, the Majority relied heavily upon Award 16 of PLB No. 2189, which it either misconstrued or failed to understand. In Award 16, the Majority found that the Carrier transferred the entire process of the receipt and transmission of certain data and reports to others outside the scope of the Clerk's Agreement. In this case, the production inputting of Form 625 was not transferred; it was eliminated.

Significantly, the neutral who authored Award 16 obviously understood the Agreement language and did not ignore principle and precedent since the same neutral in Award 99 of PLB No. 2971 (also furnished by Carrier) found no violation occurred when management entered data directly into the computer, which it had previously recorded and formatted manually, nor did he find a violation in Award 55 of PLB No. 1812 wherein he stated:

> "...Operating a CRT device is incidental to the Carman's primary duty to compile and report car repair information...."

Notably, Award 55 of PLB 1812 was cited as precedent in an arbitration proceeding between another Carrier and the Employes herein. The neutral in that case found no violation occurred when conductors were required to enter the same data in the computer system that they had previously recorded on a preprinted form and forwarded to a clerk who then entered the data into the computer system. (See arbitration between CSX & TCU, Muessig.)

One final word. As mistaken as the Majority's decision is, it is clear that it is based upon an erroneous determination of the nature of the work performed, not on the basis of the instrumentality used to perform such work. There is nothing in the Award which restricts the use of computers to members of the clerical craft, and this Award should not be so construed.

We do dissent most vigorously to this Award with the confident expectation that others will treat it as the anomaly it is.

R. L. Hicks

M. W. Fingerhut

M. C. Lesnik

P. V. Varga

J. E. Yost