

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29198
Docket No. CL-28709
92-3-89-3-90

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago, South Shore and South Bend Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10338) that:

1. Carrier violated the effective agreement when on December 8, 1987, it abolished the position of Switchboard Operator-Steno and thereafter assigned certain switchboard operator duties to employes not covered by the effective agreement;

2. Carrier shall now compensate the senior available employe, furloughed in preference, for eight (8) hours' pay at the rate of former Position No. 78, straight time if furloughed or time and one-half if regularly assigned for December 9, 1987, and for each and every day thereafter that a like violation exists.

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.

As Third Party in Interest, the American Train Dispatchers Association was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

On December 1, 1987, the Carrier issued Bulletin No. 1069 abolishing Position No. 78, Switchboard Operator-Steno Clerk, duty hours 7:00 A.M. to 4:00 P.M. five days per week, in the Carrier's Michigan City, Indiana, General Office effective December 8, 1987. At the time of the abolishment and for several years prior thereto "... all radio reports pertaining to improper signals, track related problems, debris on right-of-way, etc., . . ." were directed to the Switchboard Operator-Steno Clerk rather than to a train dispatcher. However, during the hours the operator was off duty such reports were made to a train dispatcher. On December 2, 1987, by General Notice No. 99, the Carrier directed that "[E]ffective immediately, all radio reports pertaining to improper signals, broken gates, track related problems, debris on right-of-way, etc. should be directed to the South Shore Train Dispatcher." The claim in this case followed.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

The dispute in this case centers upon Rule 1(a) - Scope and Work of Employees Affected - of the applicable Schedule Agreement which provides in pertinent part:

" . . . Positions or work referred to in or coming within the scope of this agreement belong to the employees covered thereby and no work or positions shall be removed from the application of these rules except by agreement between the parties hereto, nor shall any officer or employee not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties except by agreement between the parties signatory hereto."

The record establishes that the disputed work in this case is primarily related to that work of the dispatcher's craft involving the sending and receiving of radio messages. The dispatchers are not covered by the applicable Schedule Agreement. During the hours the Switchboard Operator-Steno Clerk was not on duty dispatchers and Carrier officials performed the disputed work. During the on-duty hours of the position the disputed work consumed no more than one-half hour.

The Carrier and the Organization have advanced numerous arguments and cited numerous Awards in support of their respective positions. After a thorough review of those arguments and Awards we are convinced that the claim is without sufficient support.

With the exception of Third Division Award 21050, none of the Awards cited by the Organization involved a scope clause which allowed officers or employees not covered by the Agreement to perform work covered by the Agreement which is incident to their regular duties. Rule 1(a) in this case contains such a provision. The applicable Schedule Agreement in Award 21050 contained a provision specifically confining performance of the disputed work exclusively to employees covered by the Agreement. There is no such provision in the parties' Agreement in this case.

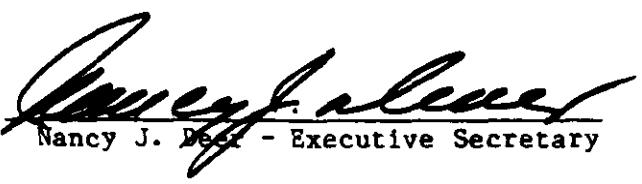
Of the authority cited to this Board we find Third Division Award 26814 to be the closest to the case before us. The Scope Rule involved in Award 26814 allowed employees and officials not covered by the Agreement to perform any work covered thereunder which was incident to their regular duties. The record affirmatively demonstrated that the disputed work was incidental to the regular and usual duties of crafts not covered by the Agreement whose member performed the disputed work. That work consumed relatively little time of the noncovered employees who performed it. The Board found that the disputed work fell within the exception to the Scope Rule permitting officials and nonagreement employees to perform work incident to their regular duties.

We find Third Division Award 26814 persuasive. Accordingly, we conclude that the claim in this case has no merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dey - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.