

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29338
Docket No. CL-29644
92-3-90-3-646

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Soo Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10532) that:

1. Carrier violated and continues to violate the current T.C.U. Agreement, specifically Rule 1 - Scope when the Carrier allowed and/or required Train Crew employees at Austin, Minnesota, to make daily yard checks, writing up switch lists, sorting waybills, posting general order and other miscellaneous duties covered under the Scope of the current Clerical Agreement.

2. Carrier shall now be required to compensate R. D. True for eight (8) hours pay at the rate of \$12.42 per hour from December 1, 1988, and for each and every day thereafter that the violation is continued."

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 United Transportation Union was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

Pursuant to an Implementing Agreement with the Organization, the Carrier abolished two clerical positions at its Austin, Minnesota terminal and transferred them to its facility at Mason City, Iowa. The two positions abolished were those of the Agent and a Yard Clerk/Operator, which was held by Claimant. Claimant then bid into the new position of Yard Clerk established in Mason City under the terms of the Implementing Agreement.

Subsequent to the transfer, according to the Carrier, the Clerks at Mason City, Iowa, communicated with the train crews at Austin, Minnesota, via a FAX machine or the telephone, sending computerized listings of cars in the yard, switching instructions, and other information needed by train crews. The Conductors at Austin likewise used the FAX machine or telephone to advise the Clerks at Mason City of any cars set out, switched, or picked up enroute, and the track location when the crew yarded a train.

The Organization contends that this new system is operating in violation of Rule 1 of the Agreement. Although the Implementing Agreement provided that all of the clerical work would be transferred to Mason City, the Organization alleges that members of the Operating Crafts are now making physical yard checks, writing up switch lists, sorting waybills and performing other work which belongs to members of the Clerical Craft.

Rule 1 reads in pertinent part as follows:

"Rule 1 - Scope

(d) Positions or work coming within the scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employee not covered by this Agreement be permitted to perform any work covered by this Agreement which is not incident to his regular duties except by agreement between the parties signatory hereto, nor shall the foregoing be construed to require the transfer of work now being performed by employees not covered by this Agreement to employees covered by this Agreement."

Since this is a "work and position" Scope Rule, the Organization need not demonstrate exclusivity of the work on a system-wide basis, but only that work previously performed by members of the Clerical Craft at Austin is now being performed by employees not covered by the Agreement. The question before the Board is whether the Organization has met its required burden of proof to make such a showing.

The Organization as part of its Submission furnished an exhibit of 63 documents, consisting of Train Lists, Wheel Reports, and marked-up computerized listings of cars, which it described as "yard checks" made by Conductors. It states that after these documents were worked on they were FAXED to Mason City, and contends that they prove the Conductors are now making physical yard checks at Austin and performing other work belonging to the Clerical Craft.

It also submitted statements by four Conductors, in which the Conductors stated that they were spending from forty minutes to an hour at the start and end of each work shift doing work which they believe should be done by Clerks. In general, the statements characterized their use of the FAX machine, the making up of lists, etc. as "clerical work"; they also stated that Conductors walk the tracks looking for missing cars.

The Carrier responds that these "yard checks" are simply reports which the Conductor provides to the Clerks at Mason City via the FAX machine. It contends that the only thing the train crews are doing differently now is FAXING the information they used to give directly to the Clerk at Austin to the Clerks at Mason City. The Clerks at Mason City use this information to put together the yard report and mark up cars for switching at Austin; they then FAX the yard report, switching instructions, and any other information the train crews need to the yard office at Austin. The Carrier thus contends that the same work previously done in Austin is merely being done by the Clerks in Mason City in a different manner.

It should be noted at the outset that there is nothing in the record which establishes what the Claimant's specific duties were as a Yard Clerk/-Operator at Austin; there is likewise no indication as to what his present duties are as a Yard Clerk at Mason City and how these duties differ from his work at Austin. Although the Organization submitted the statements by the four Conductors, the Board views these as self-serving statements at best and of little evidentiary value.

The Organization did not submit any substantive evidence to support its contention that what it describes as "yard checks" by train crews under the new system are the same as the physical yard checks which may have been previously performed by a member of the Clerical Craft at Austin. Based on the record before it, the Board is not prepared to conclude that when a conductor makes up the lists in question here he is doing so by walking the tracks and making a physical yard check. It appears more likely that the function of a physical yard check, except for occasional searching for missing cars, has been eliminated by the new system.

The Carrier's statement that the only thing the train crews are doing differently is FAXING information to a Clerk in Mason City, which they used to give face-to-face to a Clerk at Austin, was thus not substantively refuted by the Organization.

As previously noted, the Organization has the burden of proving that what took place violated the Scope Rule. Here the Organization has made conclusory allegations, but did not come forward with evidence to support its contentions. We thus conclude that the Organization has failed to demonstrate a violation of the Rule by the Carrier.

Form 1
Page 4

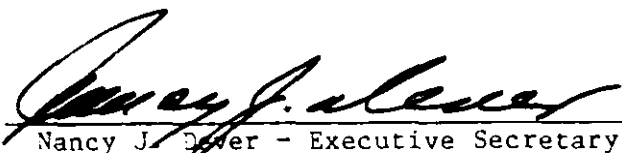
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.