

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29525  
Docket No. CL-29568  
93-3-90-3-525

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications  
(International Union  
(  
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10509) that:

1. Carrier violated the Agreement when, beginning August 6, 1988 and continuing, the Carrier allowed, permitted or required supervisory personnel to report Jacksonville based Train Dispatcher's time for payroll purposes.
2. Account violation listed above, Carrier shall compensate the Senior Available Employee, unassigned in preference, eight (8) hours' pay at the straight time rate of \$108.11 each day, commencing August 6, 1988, and for each subsequent day the violation occurs. Claim is to include all subsequent pay increases including COLA.
3. In addition, the Carrier shall now be required to return the work made subject to claim to the employees of the clerical craft from whom it was improperly removed."

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 waived right of appearance at hearing thereon.

For many years both before and after May 16, 1981, a Data Entry Clerk covered by the scope of the applicable clerical Agreement, entered the time of Jacksonville based Train Dispatchers into the payroll data base. Over the years, with the introduction of technology, the method of entering Jacksonville Train Dispatchers' time changed, but was always performed by a clerical employee.

On December 18, 1986, the parties signed an Implementing Agreement under the auspices of the May 7, 1981 Job Stabilization Agreement, which consolidated the Jacksonville Division into the Tampa Division. As part of the consolidation, the Data Entry Clerk position at Jacksonville was abolished and the work of the position, including the entering of Jacksonville based Train Dispatchers' time into the payroll, was transferred to Tampa. During the next year and a half, a Tampa clerical employee covered by the applicable clerical Agreement entered Jacksonville based Train Dispatchers' time into the payroll data bank.

During 1987, the Carrier began consolidating its more than thirty train dispatching locations into one new, centralized train dispatching facility at Jacksonville. During the next two years, the train dispatching functions performed in the various field offices were gradually transferred to Jacksonville. The centralization of train dispatching functions led to the closure of the Jacksonville train dispatching office and the train dispatching work was then transferred into the centralized facility in the same city. Since an excepted employee entered Train Dispatchers' time into the payroll at the centralized facility, the Tampa clerical employee no longer entered Jacksonville Train Dispatchers' time following the closure of the Jacksonville train dispatching office effective, on or about, August 6, 1988.

The Organization charges that the Carrier violated Rule 1 because it transferred work covered by the positions or work Scope Rule from a covered clerical employee to an excepted employee.

The Carrier raises several defenses. The Board finds that, while the Carrier's first two defenses do not overcome the evidence supporting the Organization's claim, the Carrier's third defense (that the dispute involves new work) blocks this claim.

First, the Carrier contends that the positions or work Scope Rule is irrelevant and that the dispute should be controlled by the former general Scope Rule pursuant to a Memorandum of Agreement dated May 7, 1981. Under this Agreement, if persons not covered by

the clerical Agreement are performing work at a particular location on the effective date (May 16, 1981) of the new, positions or work Scope Rule, disputes concerning the assignment of such work would be controlled by the prior general Scope Rule. However, on June 1, 1981, Clerks at Jacksonville were entering the Jacksonville Train Dispatchers' time for payroll purposes. It may be that persons other than clerical employees were entering Train Dispatchers' times at other train dispatching offices, but at Jacksonville, clerical employees exclusively entered the time of Jacksonville Train Dispatchers. Thus, the dispute is controlled by Rule 1 effective May 16, 1981.


Second, the Carrier contends that the establishment of a centralized train dispatching facility severed the right of Clerks to perform the disputed work. However, the consolidating of train dispatching functions does not permit the Carrier to unilaterally remove work from the scope of the applicable Agreement. Conversely, because train dispatching functions at Jacksonville are integrated into the larger centralized facility at the same location does not mean that the work of entering the time for all Train Dispatchers accrues to clerical employees.

The Carrier's third defense is whether the disputed work is new. Since the Carrier never assigned any timekeeping function for Dispatchers in the consolidated facility to the Clerk at the Tampa office, we conclude that keeping train dispatching time in the centralized facility is new work. The record shows that the Tampa Clerk was relegated to spending a few seconds a day inputting Jacksonville based Train Dispatchers' time into the payroll. This work was distinct from entering time for Dispatchers across the system. As Dispatchers were transferred into the centralized facility, the entry of their time was not assigned to the Tampa Clerk. The submitting of time for Dispatchers in the centralized facility was new work and the Tampa Clerk's work vanished with the closure of the local Jacksonville train dispatching office. The disputed work no longer existed and the Scope Rule cannot be used to encompass new work never previously performed by Clerks.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.