NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 29598
Docket No. CL-30097
93-3-91-3-530

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

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(National Railroad Passenger
(Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10621) that:

1. The Carrier, acting arbitrarily, capriciously and in an unjust manner, violated Rules 1, 2, 5, 6, 7, 11, 14 and other related rules of the Agreement when, commencing on or about March 1, 1990 and continuing thereon after, it contracted with Unique Data Services Corporation to perform the work of ticket accounting which had, since Amtrak's inception, been regularly, and always performed by TCU represented Data Entry and/or Accounting Clerks.

2. The Carrier shall now be immediately required to pay the senior qualified unassigned employe in Seniority District 1 of the Midwest Division eight (8) hours at the pro rata Data Entry or Accounting Clerk rate for each day that Unique Data Services Company personnel perform the work that had formerly been performed by TCU-covered clerical employees. On any day that no qualified unassigned employee is available to perform the work, Carrier shall be required to pay Data Entry/Accounting Clerk, Ms Helen Gillis, or, if she is unavailable, the senior qualified available regularly assigned employee eight (8) hours at the punitive Data Entry or Accounting Clerk rate. Such payments shall continue until the violation is corrected."

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 employe 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.

This Claim alleges the Carrier violated the Scope Rule when it contracted with an outside vender to have certain data entry work performed. The work of entering ridership and revenue data from tickets generated by Carrier's ARROW system had been previously performed by employees in the Train Earnings Section of the Carrier's Revenue Accounting-West facility in Chicago.

The record before us, while not free of conflicting evidence and assertions, persuades us that the following operative facts have been established. Carrier is a 1971 creation of Federal law. Initially, Carrier contracted with existing railroads and other entities to provide most, if not all, of its operational services. In 1973, Carrier opened a Revenue Accounting facility of its own in Washington, DC. At that time, the parties' initial Agreement contained a "general" Scope Rule which did not expressly reserve positions or work to the Organization's members. Between 1973 and 1979, Carrier contracted out the work of capturing and entering ridership and revenue data from certain tickets. This included the work associated with automated tickets generated by Carrier's ARTS system, a predecessor of the ARROW system.

The Revenue Accounting-West facility was opened in Chicago in 1981. Capture and entry of ridership and revenue data was initially performed by Carrier's employees there by using key entry methods. Carrier leased a scanning machine in 1983, and it was operated by employees in the Train Earnings Section of the facility to read and enter the ridership and revenue information. For a variety of undisputed operational reasons, Carrier did not renew the scanner lease upon its 1990 expiration. The manual capture and entry of data was contracted out, which led to the instant Claim. There was no reduction in the number of employees assigned in the Train Earnings Section as a result of contracting the work.

While Carrier's employees were performing the scanning work in Chicago, Carrier contracted out data entry work elsewhere. Its Information Systems Department in Washington, DC contracted out certain payroll, financial and material productivity data entry work until 1982. A second contractor was used from 1982 until 1988. In addition, the Materials Management Department contracted

out data entry work on a regular basis during the period from 1976 to 1979. Carrier also asserted, without dispute, that other craft employees and management personnel perform data entry work daily.

The record also establishes that on several occasions between 1973 and 1988, the Organization served Section 6 notices proposing Scope Rule modifications that would have reserved to the employees any work then or thereafter assigned to them for performance. The Organization was unsuccessful in so modifying the Scope Rule.

Distilled to its essence, the Organization's position is that any work once assigned to the employees under the Agreement cannot be removed unilaterally. Its argument is essentially this: By having exclusively performed the ticket data entry work at Chicago for approximately a decade, such work became reserved to TCU represented employees regardless of whether other data entry work at Chicago became reserved to the employees there. The Organization sees such activity as the requisite demonstration of customary, historical and traditional performance of this specific facet of data entry work that is necessary, in its view, to reserve the work under the Scope Rule.

Carrier, quite to the opposite, argues that data entry work is not reserved by the Scope Rule. First, it says the evidence shows that such work has been regularly, historically and customarily contracted out. Second, it contends the negotiating history of the parties, as shown by the Organization's repeated and unsuccessful efforts to modify the Scope Rule, demonstrates that it at all times retained the right to contract out the disputed work.

It is undisputed that we have before us a general Scope Rule. Whether the work in question is reserved to the employees via such a Scope Rule is a question of fact to be determined by this Board upon consideration of all relevant circumstances in the record developed by the parties in their handling of the matter on the property. The typical means of resolving this question is to examine the record to determine whether it demonstrates that the employees have customarily, historically and traditionally performed the kind of work in dispute. In the typical case, the collective bargaining agreement involved is a system-wide agreement. The instant Agreement is no exception. In such a case, the analysis of the record has a system-wide perspective unless there is evidence that demonstrates the parties intended that a narrower approach be taken. No such evidence exists here.

While the customary, historical and traditional performance of the work is the typical means of analysis, it is by no means the only one. Evidence of the bargaining history, when available, is helpful in resolving questions about Scope coverage. Previous Awards of this Board have recognized unsuccessful attempts to negotiate a rule change as being strong evidence that the existing rules do not provide for the result sought.

After considering the contents of the extensive record before the Board and all Awards cited by the parties, we find that the Organization's evidence does not establish a violation of the Agreement. By either of the analytical approaches described earlier, the Organization's evidence has not demonstrated that the disputed work was reserved to the employees by the Scope Rule.

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 9th day of March 1993.