

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29702
Docket No. CL-29760
93-3-91-3-127

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

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-10545) that:

1. Carrier violated the effective Agreement, particular Rule 1 thereof, when on various dates it required and/or permitted non-covered employes to perform track checking at Council Bluffs, Iowa, work which is reserved to employes covered by said agreement.
2. Carrier shall now compensate the following Claimants eight (8) hours' pay at the rate of Yard Clerk for the dates set forth below:

Mr. M. J. Carroll: July 1, 2, 3, 6, 7, 8,
9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23,
24, 27, 28, and 29, 1987.

Mr. W. J. Leggio: July 11, 12, 18, 19, 25
and 26, 1987."

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 were given due notice of hearing thereon.

This Claim involves an allegation that Carrier's Rip Track Foreman at Council Bluffs, Iowa, performed yard checking of the Rip Track, on a daily basis. The Organization maintains that its Scope Rule, a "Positions or Work" rule, prohibits the performance of work covered by the Agreement by strangers to the Agreement. Carrier maintains that the making up of switch lists is not work exclusively performed by employees subject to the Clerk's Agreement and it was permissible to have the Rip Track Foreman make up the lists.

Preparing lists of tracks is most certainly work subject to the Clerk's Agreement. The parties have adopted a "Positions or Work" Scope Rule. In the accepted application of this type Scope Rule it is not necessary for the Organization to demonstrate that the work alleged to have been performed by strangers to the Agreement was exclusively that of Clerks. It is only necessary to demonstrate that Clerks performed the work at the location where the claim arose and that the work is now being performed by others.

In this record, Carrier acknowledges that Clerks in the past made the Rip Track lists which are now being completed by the Car Foreman. Under the application of a "Positions or Work" Rule, this is sufficient to support a conclusion that the work was removed from the application of the Agreement.

The Claim will be sustained.

The Board concludes, however, that the reparations sought for the violations are excessive. The Organization has claimed eight hours straight time for each instance the Rip Track Foreman made up a list. At best the preparation of these lists did not take an hour to complete. Any penalty in excess of an hour in the circumstances present here would be grossly excessive. The Board will therefore award each Claimant one hour pay at straight time rates for each date of 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. Bever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.

CARRIER MEMBERS' DISSENT
TO
AWARD 29702, DOCKET CL-29760
(Referee Fletcher)

The issue in this claim has been identified as that:

"...Carrier's Rip Track Foreman...performed yard checking of the Rip Track..."

On the property, the work was described as follows:

"On each of the dates of claim, the rip track foreman made a list of cars that had been repaired by Car Department forces and gave the information to the yardmaster so that the cars could be moved from the rip track. The rip track foreman also maintained a list of cars delivered to the rip track for repair in order to schedule and assign the necessary repair work. Rip track foremen have always performed work in this manner. Rip track foremen have prepared their own lists of completed work and work to be performed and have made their own checks of cars at the rip track prior to releasing them."

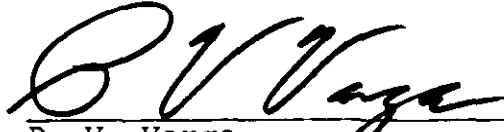
The Organization submitted as its evidence, bulletins for Positions 015, 005 and 011, yard clerk positions at Council Bluffs and a May 10, 1987 listing done by the foreman of the rip track two months prior to this claim. While these three positions had specific duties to check inbound and outbound trains, check yard and industry track and prepare switch lists, there was no evidence that the rip track was included in these assignments. Furthermore, Claimants were not the incumbents of any of these positions but held regular relief positions and were never shown to have track checking as part of their assignment. Third Division Awards 29706, 29361, 28884 and 28882..

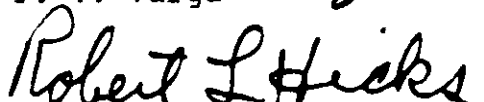
While Award 29702 makes the general observation that:

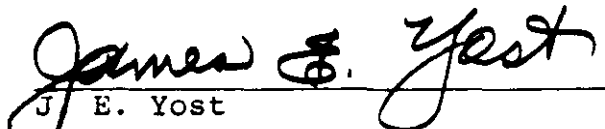
"...preparing lists of track is most certainly work subject to the Clerk's Agreement."

there never was any evidence that the rip track foreman's duties were covered under the Organization's "Position and Work" scope rule. As noted, the claim filed was for specific work at a specific location beginning on July 1, 1987. Absent any evidence that, beginning July 1, 1987, Claimants, in particular, and the Organization in general, were deprived of performing reserved work, there is no basis for the conclusion made in this Award that the Claimants/Organization were aggrieved.


The record in Award 29702 does not support the conclusion reached and we vigorously dissent.


P. V. Varga


R. L. Hicks


J. E. Yost


M. W. Fingerhut


M. C. Lesnik