

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29793
Docket No. CL-30018
93-3-91-3-423

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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-10611) that:

1. Carrier violated the effective agreement when, commencing on July 7, 1988, it required Assistant Agents and Chief Clerks to perform intermodal work reserved to employees of the Intermodal Class.
2. Carrier shall now compensate Ms. M. L. Dotson eight (8) hours' pay at the time and one-half rate for July 7, 1988, and for each and every day thereafter that a like violation occurs and, further, shall compensate Mr. Leon LaSota eight (8) hours' pay at the time and one-half rate for July 22, 1989, and continuing for as long as a like violation occurs."

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 employee 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 dispute was handled as two separate claims on the property. The first was submitted on July 7, 1988, on behalf of

Ms. M. L. Dotson. The issue arose when the Chief Clerk or the Assistant Agent, rather than an Intermodal Clerk, receipted for trailers at the Proviso Piggyback Ramp between Midnight and 7:00 am when no Intermodal Clerks were assigned. The second claim, which involves the same issue, was submitted on July 22, 1989, on behalf of Mr. Leon LaSota.

The Claimants were assigned Clerks on the daylight shift at the Piggyback Ramp at the Carrier's Chicago Freight Terminal at Proviso, Illinois. The Proviso Terminal is one of Carrier's major yards and includes a classification yard, arrival and departure yards and two Intermodal facilities for trailers. The C&NW maintains a seven day a week, 24 hour per day operation at the Proviso location.

Clerks who are assigned to the Intermodal positions at Proviso have duties that include receipt for inbound trailers and the handling of all paper work. Other clerical employees perform similar duties for other inbound freight. A clerical position is classified as Intermodal by the amount of time devoted to intermodal related duties.

Article VII of the 1986 National Agreement, as quoted below, provides for reduced rates of pay for those employees who are preponderantly, (greater than 50% of the time), engaged in work in connection with the operation of intermodal facilities. This provision was negotiated in connection with the serving of Section 6 Notices whereby the Carrier requested reduced rates of pay for service work and intermodal service positions. Article VII states the following:

"ARTICLE VII - SERVICE WORK AND INTERMODAL SERVICE

Section 1 - Coverage

- (a) With respect to service work, this Article shall be applicable to positions classified as, or where more than one half of the duties are generally recognized as, that of janitor, building cleaner, crew driver, custodial watchman, messenger, laborer (ICC Division Nos. 510 and 511), or freight car cleaner.
- (b) With respect to intermodal services, this Article shall be applicable to positions preponderantly engaged in work in connection with the operation of intermodal facilities, such as, but not limited to, supervisory, clerical, ramp, hostling, on-and-off loading

and unloading, inspection, damage control, tie-down and any other work in connection with the handling of trailers, containers, autos, and other intermodal shipments.

Section 2 - Rates of Pay

- (a) For positions described in Section 1 above, the full rate of pay for employees who establish seniority after the date of this Agreement shall be 75% of the rate in effect as of November 30, 1985 and shall be subject to Article III, Rate Progression.
- (b) If such a position is filled by an employee with less than 6 years of service and who has been furloughed for more than one year as of the date of this Agreement, other than an employee subject to a protective agreement or arrangement, such employee shall be compensated at the rate of 75% of the full rate of the position as of November 30, 1985 and, where applicable, shall also be subject to Article XI, Rate Progression, of the Agreement of December 11, 1981 or local rules governing entry rates.
- (c) A non-protected employee, recalled to fill a specific intermodal or service worker position at 75% of the full rate, may decline recall until recalled for any other position or extra list. A protected employee must respond to recall in accordance with existing rules and agreements.

Section 3 - Rate Increases

- (a) In lieu of the general wage increases provided in Article I, Sections 2, 4, and 6 the cost-of-living adjustments provided in Article II, employees described in Section 1 of this Article shall be paid lump sums computed as follows in addition to the lump sums provided for in Article I:
 - (1) Employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission

as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) on jobs in these classifications during the period October 1, 1985 through September 30, 1986 will be paid \$485 (employees covered by Section 1(a) of this Article) or \$540 (employees covered by Section 1(b) of this Article) during the first half of December 1986. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying \$485 or \$540, as the case may be, by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements, as described above) paid for during that period on jobs in these classifications divided by 2,000.

- (2) Employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) on jobs in these classifications during the period October 1, 1986 through September 30, 1987 will be paid \$1045 (employees covered by Section 1(a) of this Article) or \$1160 (employees covered by Section 1(b) of this Article) during the first half of December 1987. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying \$1045 or \$1160, as the case may be, by the number of straight time hours (including vacations, holidays, paid sick leave, and guarantees in protective agreements or arrangements, as described above) paid for during

that period on jobs in these classifications divided by 2,000.

- (3) Employees with 1,167 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) on jobs in these classifications during the period September 1, 1987 through March 31, 1988 will be paid \$945 (employees covered by Section 1(a) of this Article) or \$1050 (employees covered by Section 1(b) of this Article) during the first half of June 1988. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying \$945 or \$1050, as the case may be, by the number of straight time hours (including vacations, holidays and paid sick leave and guarantees in protective agreements or arrangements, as described above) paid for during that period on jobs in these classifications divided by 1,167.
- (b) Where lump sums under this Article or under Article I are due employees with seniority dates prior to the date of this Agreement, who are subject to Article XI, Rate Progression of the Agreement of December 11, 1981, or local rules governing entry rates, such lump sums shall be the amount of the lump sum produced by the applicable Section multiplied by the weighted average progressive or entry rate percentage applicable to wages earned during the such lump sum determination period.
- (c) Where lump sums under this Article or under Article I are due employees with seniority dates subsequent to the date of this Agreement, who are subject to Article III, Rate Progression of this Agreement, or local rules governing entry rates, such lump sums

shall be 75% of the lump sum produced by the applicable Section, multiplied by the weighted average progressive or entry rate percentage applicable to wages earned during such lump sum determination period.

Section 4 - Subsequent Negotiations

Within 60 days following the date of this Agree-ment, the parties shall begin local negotiations on further collective bargaining provisions governing the rules, rates of pay and working conditions of employees engaged in intermodal work.

Section 5 - Savings Provision

Nothing in this Article is intended to restrict any of the existing rights of a carrier."

On June 23, 1989, due to a decline in piggyback business, the Carrier abolished three positions at the Proviso Piggyback Ramp. These were Position 911, General Clerk, Position 682, General Foreman, and Position 608, Trucker. The duties of the General Clerk and the General Foreman included the receipt and dispatching of trailers and containers. In addition to the abolishments, the Carrier changed the stated hours of operation of the ramp from 7:00 a. m. to 6:00 p. m. Monday through Friday, and 8:00 a. m. to 4:00 p. m. on Saturday.

Simultaneous with the abolishment of those positions, the Carrier established positions to perform other duties required by train operations at the Proviso Terminal. These positions were not designated as intermodal Clerical positions, and therefore, did not receive the reduced intermodal rates of pay. Subsequent to June 1989, when trailers were delivered to the Proviso Terminal during the second or third shift, a clerical employee receipted for the trailer. Other related paperwork was held to be completed by the Intermodal Clerks when they were on duty on the day shift.

On September 1, 1988, the Organization submitted a Claim on behalf of Ms. Dotson stating that "Intermodal Clerk work had been performed by the Chief Clerk and Assistant Agent in violation of the National Contract." On August 29, 1989, the Organization submitted the second Claim on behalf of Mr. LaSota citing Carrier for the same violation which allegedly occurred during the second shift.

It should be noted that the Organization characterizes this as "a continuing claim". Without deciding that point, due to an agreement reached on November 30, 1989, the manner in which employees are worked at the intermodal facilities was changed. Therefore, even if arguing this was a continuing claim, there would be no liability beyond that date.

The Organization asserts that the provisions of Article VII "constitute concessions on the part of the employees for which a quid pro quo was granted. The intent of the Agreement was such that intermodal workers will protect the work in connection with intermodal shipments. In exchange for this, intermodal workers were not granted general wage increases and the rate of pay for new hires is permanently reduced by a substantial amount." According to the Organization, intermodal workers therefor are "entitled to perform the class of work which is at the heart of this dispute, and they are entitled to perform such work on an overtime basis."

For its part, the Carrier submits that in the last ten years, its piggyback business has declined significantly. It now comprises only 5% of the intermodal business as opposed to approximately 100% ten years ago. Additionally, the Carrier had 13 piggyback ramps in 1988, as opposed to approximately 100 ramps in 1976. For this reason, the Carrier determined that it was not necessary to maintain separate clerical positions on the second and third shifts at the Piggyback Ramp.

Further, the Carrier maintains that Article VII of the 1986 National Agreement was negotiated for reduced rates of pay for service work and intermodal positions so "that it could remain competitive in those areas." According to the Carrier, "the work performed by the Chief Clerk or the Assistant Agent is de minimus at best as the work entails no more than five (5) to (10) minutes per trailer." Finally, Carrier asserts that the work in question, signing and receiving inbound trailers, is not work reserved or performed exclusively under the position and work Scope Rule by intermodal clerical employees. In that connection, Carrier asserts without contradiction that this work of receipting for intermodal trucks has often been performed by other clerical employees on duty when the assigned intermodal clerical employee is not available.

This Board has reviewed the record and we are not persuaded that the Carrier violated the Agreement. While it is not necessary to prove "systemwide exclusivity" in order to prevail under a "position and work" Scope Rule, the Organization was required to show that positions or work have been removed from coverage of the Agreement. The Organization was unable to shoulder that burden.

So far as this record demonstrates, Carrier properly abolished positions for which the duties have become virtually "part-time jobs". Article VII of the National Agreement did not expressly or implicitly guarantee to Intermodal Clerks an exclusive right to receipt for intermodal shipments. The Organization has not persuasively shown any violation of the Scope Rule. Finally, it appears that the time involved in performing the duties in dispute is indeed, de minimus. For the aforementioned reasons, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.