

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30104
Docket No. CL-30420
94-3-92-3-428

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10816) that:

1. Carrier violated the Agreement between the parties on July 27, August 30, September 2 and September 6, 1988, when it allowed an outside contractor to transport via truck, material from Bensenville, Illinois, to Jasonville, Indiana, and Davenport, Iowa and refused to allow covered employees to perform these duties. The Organization asserts that Rule 1, Scope was violated by the Carrier.
2. Carrier shall now be required to pay the Senior Available Qualified Chauffeur Clerk eight (8) hours at the time and one-half rate for July 27, August 30, September 2 and September 6, 1988."

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.

On July 27, September 2 and September 6, 1988, the Carrier retained an outside contractor to transport material via truck from the Bensenville, Illinois Storehouse to Jasonville, Indiana. On the fourth claim date (August 30, 1988), the Carrier utilized the same contractor to carry material to Davenport, Iowa. For each delivery, a clerical employee represented by the Organization

loaded the trailer but the outside contractor's employees operated the tractor/trailer to deliver storehouse supplies to the remote locations on the Carrier's property. Presumably, employees covered by the Agreement unloaded the materials at Jasonville and Davenport.

The Organization charges that the Carrier violated Rule 1(d) which provides:

"Positions or work coming within the scope of this Agreement belongs 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 be 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."

The Carrier contends that in the past, other craft employees and outside commercial entities have performed the work of transporting materials from Bensenville to the two outlying points. The Carrier related, and the Organization did not refute, that clerical employees frequently loaded supplies and materials into Carrier box cars and the material was then transported by train. The Carrier thus concludes that locomotive engineers have performed the disputed work and so, the work is not exclusively reserved to the class and craft of clerical employees.

At the onset, the Carrier argues that the Claim is procedurally and fatally defective because Claimant sought pay for eight hours at the pro rata rate on the property but when the Organization filed the claim with this Board, it improperly amended the Claim to seek eight hours at the time and one-half rate for each alleged violation. The Board recognizes that the Organization impermissibly attempted to amend the Claim to seek a greater remedy than the one it sought when the claim was originally filed on the property. The minor change in the relief sought was not a material alteration of the Claim. Thus, the Board will decide the case on its merits, but disregard the Organization's improvident attempt to increase the amount of its requested remedy.

After reviewing all the evidence, the Board finds that the Organization proffered substantial evidence demonstrating that the Carrier violated the Scope Rule. Rule 1(d) is a positions and work Scope Rule which protects work assigned to clerical employees

regardless of exclusivity. Moreover, the work in dispute here is not the shipment of materials from Bensenville to the outlying points but rather, the transporting of store department materials, via over-the-road vehicle, to the outlying points. Transporting materials by rail is excluded from the disputed work.

In the past, Chauffeurs, represented by the Organization, operated trucks carrying materials from Bensenville to the outlying points. Of course, these Chauffeurs did not operate locomotives when the material was shipped in box cars and so, such work was never assigned to clerks. However, the shipment of materials by train is not the work in dispute. The Claim is expressly limited to transporting materials via highway vehicle.

Finally, although the Carrier vigorously asserted that commercial trucking firms have transported the materials in the past, it did not submit any evidence to support this purported past practice. As the proponent of the past practice, the Carrier bore the burden of showing that, prior to the Claim dates, the Carrier had utilized an outside contractor to perform the disputed work.

The Claims are sustained for eight hours at the straight-time rate for each of the four claim dates.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 4th day of April 1994.