

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30239
Docket No. CL-29880
94-3-91-3-376

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

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10605) that:

1. Carrier violated the effective Telegraphers' Agreement when, on and after April 12, 1990, it removed work of preparing waybills from the position of Agent at Plainfield, Illinois, and assigned such work to employees not covered thereby;
2. Carrier shall now compensate Mr. F. R. Scagnelli and/or his successor or successors in interest, namely, any other employee or employees who have stood in the status of Claimant as occupant of the position of Agent, Plainfield, and as such have been adversely affected for one (1) hour's pay at the time and one-half rate of such position for April 12, 1990, and for each and every day thereafter that 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 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 dispute involves a claim on behalf of the Freight Agent at Plainfield, Illinois, for payment of one (1) hour of pay at the punitive rate for each day on which the Agency Bill Clerks at Gary, Indiana, perform certain work which the Organization contends belongs to the Agent and his position and which, it is contended, was improperly "transferred" from the Agent's position to the Clerks' positions.

The operative facts in this case are reasonably clear and not really in dispute. Prior to the time of these claims, the Agent at Plainfield would receive shipment information from the individual shippers from which he would manually prepare a hard-copy waybill which would accompany the shipment. At the same time that he prepared the waybill, the Agent would transmit all of the shipment information and a copy of the prepared waybill to the Carrier's Agency department at Gary where clerical employees would enter all of the information received into Carrier's computer system.

With the advent of RAILINC - an Association of American Railroads device and plan to move freight cars in interline service without accompanying paper waybills - an Electronic Data Interchange operation was established. Under this E.D.I. operation, the Claimant Agent continued to receive the shipment information from the individual shipper, but there was now no need for him to manually prepare a paper waybill to accompany the shipment. Rather, the Agent was required only to transmit a copy of the shipper's information to the Gary Agency office where, as previously done, the clerical employee entered the information into the Electronic Data Interchange computer which, in accomplishment of the objective of moving freight cars in interline service without accompanying paper documents, transmitted all necessary information in connection with the shipment.

The Organization in its presentation of this dispute point out that, on this property, the provisions of Article VIII of the National Agreement of February 25, 1971, which permitted the consolidation of Clerk-Telegraphers (Agents) Agreements was never implemented. Therefore, the Organization correctly observes that the separate Agreements of the Clerks and Telegraphers (Agents) remain in effect as written. It argues that the separate Scope Rule of the Telegrapher's (Agents) on this property prohibits the transfer of work from that craft to the Clerical craft. The Organization continues its argument by contending that inasmuch as this Carrier failed to take advantage of the consolidation of Clerk-Telegrapher Rules under the aforementioned 1971 National Agreement, it is precluded in this instance from having the waybills covering shipments from the jurisdiction of the Plainfield Agent prepared by Clerks under any circumstances.

The pertinent portion of the Telegrapher's Scope Rule, as quoted to the Board by the Organization, reads as follows:

"SCOPE AND WORK OF EMPLOYES AFFECTED

ARTICLE 1 SCOPE

(a) These rules shall govern the rates of pay and working conditions of all employees engaged in the work of the craft on positions identified in paragraph (b).

(b) Positions and/or work thereof outlined below are generally representative of those within the craft or class:

Agents (included in wage scale)
Agent -- Telegraphers
Agent -- Telephoners

* * * * *

Any combination of two or more of the above classifications

* * * * *

(d) Improvements or changes in methods of performing work covered by this agreement shall not operate to take the work out from under this agreement.

The Carrier recognizes the right of the Organization to seek a wage adjustment for a specific position(s) within thirty (30) days after there is a major change in duties or responsibilities resulting from consolidation and/or abolishing positions.

INTERPRETATION:

This Paragraph (d) shall not operate to prevent the Carrier from consolidating and/or abolishing positions covered by this agreement due to such improvements or changes.

* * * * *

The Carrier contends that, in the first place, there was no "transfer" of work from the Agent to the Clerk. Rather, it contend that the manual preparation of a waybill ceased to be a necessary work function of anyone with the advent of RAILINC and Electronic Data Interchange. Carrier further argues that under the provisions of the National Agreement dated April 15, 1986, specifically Article V thereof, the technological changes here involved were made possible. Article V referenced herein reads as follows:

"ARTICLE V - ELECTRONIC DATA INTERCHANGE

Section 1 - Scope Rules

Except as provided in Section 2 nothing in this Article shall be construed to permit the removal of work and functions currently covered under individual scope rules at the property level.

Section 2 - Data Interchange

Electronic data may be transmitted, received and exchanged among railroads and between them and their shippers and/or receivers (or their agents), including the use of Railinc or other similar data switching services, without any requirement that employees represented by the organization signatory hereto participate in such function. Input and retrieval of data between railroads and their shippers and/or receivers (or their agents) must be related to the shipper's or receiver's business.

Section 3 - Request for Information

If requested by the organization, the carrier will furnish on a monthly basis the name and location of customers accessing its computers under this Agreement and the estimated time utilized for data entry.

Section 4 - Savings Provision

- (a) Nothing in this Article is intended to restrict any of the existing rights of a carrier.
- (b) This Article shall become effective

15 days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date."

Carrier continues by arguing that the basic function of waybill preparation is not work which is reserved exclusively to Agents and that under the provisions of the general type Scope Rule as found in the Telegrapher's Agreement on this property, there is no prohibition on the Carrier against having Clerks generate waybills which are an incidental by-product of a labor saving device which changed the method of waybill preparation and completely eliminated the need for manual preparation.

The Board has repeatedly held that the installation of labor-saving devices and techniques which result in the elimination of work functions does not give rise to violations of Scope Rules. As the Board held in Third Division Award 19468:

"We are not dealing with a case in which one class of employee now performs work which formerly was done by Claimant. We are dealing with a situation in which data processing equipment performs work which formerly was done manually."

This position finds support in Third Division Awards 23458, 25693, and 27975, as well as Second Division Award 11503.

On the basis of these well reasoned Awards and in the absence of any contravening probative evidence from the Organization, the Board has no recourse but to deny the Claim as presented on the basis that there has been no proven violation of the Telegrapher's Scope Rule.

AWARD

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.