Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30425
Docket No. CL-30356
94-3-92-3-80

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, Allied Services Division
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(Western Railroad Association

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union that:

1. The WRTA arbitrarily violated the BRAC/WRTA Rules Agreement, particularly Rules 1, 2, 5, and 9, among others, of the Agreement when on August 29, 1990 P. Mackell and Larry Hodges, who are not covered by our Agreement, began performing duties of Tariff Services Department (union personnel).

2. The Association shall be required to compensate P. Sowa for overtime which she was deprived of, as shown in the attached as well as for future time spent by the above exempt named personnel performing said duties, including, but not limited to the daily rate of pay, overtime and holiday pay."

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 waived right of appearance at hearing thereon.

The on-property record, by itself, provides limited background details about this dispute. According to the parties' submissions, however, the Association compiles and publishes traditional and online tariffs for western carriers. The entry of information on rules, rates and conditions was apparently done manually prior to 1986. In November of that year, the Association implemented an automated Information Management System (IMS) to access and update the database of tariff information.

Between August 29 and October 31, 1990, an exempt secretary and a manager entered tariff rules data into the database using the IMS. They performed a total of 53 hours of work.

The Organization contends the work is reserved to covered employees and, as a result, Claimant is entitled to compensation at overtime rates for not only the hours worked to date, but also, any worked by the non-covered personnel in the future. The Claim alleges a continuing violation of the effective Agreement.

The Association maintains the Agreement has a general scope rule that does not reserve specific work. In addition, it says the amount of work performed was de minimis. The Association also asserts that Claimant was regularly employed and had unlimited overtime opportunities available to her throughout the Claim period.

To establish its Claim, the Organization must demonstrate that the work is covered by the scope rule of the Agreement. Indeed, the Association, in its submission, urges that the fundamental issue in this case is whether the Organization has proven that clerical employees have the exclusive right to enter tariff rules into the database using CRT/PC devices.

The parties' Agreement contains a general Scope Rule. It does not explicitly reserve specific kinds of work to the employees covered by it. In such a case, scope coverage requires a demonstration of historical, customary and traditional performance of the disputed work by the covered employees.

Despite its limited nature, the on-property record provides a proper basis for finding that the disputed work is covered by the Scope Rule. In its December 12, 1990, reply, the Association said:

> "Prior to the inception of the IMS Data System, Tariff Services only keyed the Rules Section of each tariff. When the IMS Data System came on line, Tariff Services was no longer exclusively responsible."

In addition, the author of the Association's March 14, 1991, reply said in part:

> "As a matter of information, the District Chairman visited with me when it first came to light that Mrs. Mackell and Mr. Hodges were doing some IMS data entry. I informed the District Chairman that, in my opinion, they could do some of this work when no one else was available to do it ....
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> * * *
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> The IMS system is a relatively new system. The process of entering tariff rules into that system is a new work procedure. When first developed the work was given to covered personnel. However, there is no historic basis on which to claim exclusivity."

* * *

In addition to the foregoing, the Association's submission says, in part, as follows:

* * *

> "Furthermore, the union employee who normally would have been assigned the manuscript typing was working on other priority work of which there was a substantial backlog.
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> * * *
>
> The assignment of entering rules using IMS was given to the Tariff Services section which performed the typesetting work for the Association. Ms. Patricia Sowa was assigned the work of entering those rules when the other work associated with her position allowed."

* * *

(underlining supplied in the above excerpts)

The foregoing statements, when coupled with the Organization's assertions of scope coverage, establish a prima facie case of scope coverage. Despite its contention that there was no exclusive performance by the employees, the Association provided no specific examples of prior performance of the disputed work by others. Accordingly, we must find, on the record before us, that the

Agreement was violated as alleged.

The remedy remains for determination. The Association repeatedly asserted, without effective opposition by the Organization, that Claimant was under regular pay and had unlimited overtime opportunities during the Claim period. As we said in Third Division Award 29330:

> "In the absence of unusual circumstances, which are not present in this record, the entitlement to a monetary claim is a separate issue requiring independent proof of loss. Loss does not automatically flow from a finding of Agreement violation. No actual loss has been substantiated herein. Therefore, the monetary portion of the Claim is denied."

This record provides no basis for departing from that rationale. See also PLB No. 3657, Award 40. Accordingly, the remedy here is limited to issuance of a cease and desist order.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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