

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30451
Docket No. CL-29465
94-3-90-3-398

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

- "1. The Carrier violated and continues to violate the Clerks' Agreement, specifically Rule 1 - Scope when the Carrier removed work from employees covered by the Clerks' Agreement and permitted such work to be performed by employees not covered by the Agreement.
2. Carrier shall now be required to compensate the senior qualified extra list employee located in Minneapolis, MN area the daily rate of pay for the following positions: Position #43297 - Ramp Tractor Operator, Position #43296 - Machine Lift #1, Position #43298 - Relief Machine Operator #2, Position #43285 - Rail Van Dispatcher, Position #43289 - Assistant Rail Van Dispatcher #2, Position #43286 - Assistant Rail Van Dispatcher #3, and Position #43294-J-I Inspector; and in the event there are no extra list employees available, Carrier shall compensate the senior available qualified regular assigned employee an additional day's pay at the punitive rate for October 27, 1987, and all subsequent dates until the violation has been corrected, Claimant's compensated and work restored to the employees covered by the Clerks' Agreement."

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.

Prior to the Carrier's purchase of the Milwaukee Road in 1985, the Carrier operated one intermodal facility in the Minneapolis/St. Paul area at Shoreham Yard in Minneapolis. As a result of the purchase of the Milwaukee Road by the Carrier, the Carrier had two intermodal facilities, the additional facility operating at Worner Road in St. Paul. The intermodal facilities were approximately 25 miles apart. Employees at Shoreham Yard were covered by the Agreement between the Carrier and the Organization. The St. Paul facility, however, was operated by Milwaukee Motor Transport whose employees were not covered by an agreement with the Organization.

In late October 1987, the Carrier closed the Shoreham Yard facility. This claim addresses the Organization's contention that the Carrier transferred work from the Shoreham Yard facility to the St. Paul facility in violation of the Scope Rule.

Rule 1(d) states that the Scope Rule is not to be "construed to require the transfer of work now being performed by employees not covered by this agreement to employees covered by this agreement." With respect to the specific allegations in the claim concerning the alleged improper transfer of work, this Board is limited to the evidence and arguments developed on the property. The correspondence on the property shows that the Organization asserted that the work had been transferred from Shoreham Yard to the St. Paul facility and the Carrier denied such a transaction occurred. According to the Carrier, it was the customers who decided where to take their business which, if they desired, could have been to another Carrier. The record developed on the property is thus in conflict.

Given that the Rule 1(d) does not mandate that the work at Shoreham Yard formerly performed by the covered employees be transferred to the St. Paul facility where work was performed by non-covered employees and further given that, at best, the record developed on the property is in conflict concerning whether the work was transferred from Shoreham Yard to the St. Paul facility, we cannot say that the Organization has carried its burden of demonstrating a violation of the Agreement. The claim must therefore fail for lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.