

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30545
Docket No. CL-30450
94-3-92-3-452

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE:

(Transportation Communications
(International Union
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the Brotherhood that:

1. Carrier violated the Agreement on February 21, 22, 23, 24, 27, 28; March 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31; April 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1989, account Mr. M. D. Urfer, a Management employee, performed the duties of the Chief Clerk position in the material Division at Bensenville, IL in violation of Rule 1 (d) Scope.
2. Carrier shall now compensate Mr. A. R. LaFata for eight (8) hours punitive for each day Carrier violated Rule 1 (d) Scope."

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 said dispute waived right of appearance at hearing thereon.

Claimant was assigned as a Price Clerk to the Materials Department at the Carrier's facility at Bensenville, Illinois. Claimant filed a series of claims alleging that the Division Materials Manager had performed work on 44 separate days which should have been performed by the Claimant.

The Organization maintains that the Carrier violated the Agreement on the dates set forth in the claim when a management employee did work that fell within the scope of the Agreement and refused to permit Claimant to perform the work.

The Organization relies on scope Rule 1(d) which reads in part as follows:

"(d) Positions or work coming within the scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of any 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 the 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 Organization contends that this is a common Rule used throughout the industry to protect the work of rank-and-file employees when the labor force is downsized by the Carrier. It claims that such a downsizing occurred in late 1987 and early 1988 when the Carrier abolished several positions, including Claimant's former position of Chief Clerk at the Material Yard at Carrier's facility at Bensenville, Illinois. The Organization does not take issue with the Carrier's right to reduce the number of bargaining unit positions, when such a reduction is done in accordance with the Agreement. However, it argues that the Carrier does not have the right to eliminate a bargaining unit position and then assign work that was normally performed by that position to a management employee. Here, the Organization insists that the Carrier, in violation of the Agreement, assigned work to Claimant's supervisor which was performed by Claimant when he was Chief Clerk.

The Organization rejects any suggestion by the Carrier that the bargaining unit work performed by its supervisor was de minimus and incidental to his regular duties. It alleges that there was a significant amount of work that was performed by the supervisor which was not made part of the claim because of a lack of documentation. The organization also insists that the documentation submitted by the Claimant is sufficient to prove that the work at issue was done consistently, knowingly and deliberately by the Carrier.

Accordingly, and for all of these reasons, the Organization asks that its claims be sustained in their entirety.

Carrier, on the other hand, argues that the Organization's claims are without merit. It insists that it has not violated the Agreement.

Carrier notes that scope Rule I (d) prohibits its managerial employees from performing work covered by the Agreement "which is not incident to his regular duties." This language, it argues does not give bargaining unit employees the exclusive right to perform work covered by the Agreement. The Carrier insists that such work may be performed by its managerial employees if it is incidental to their regular duties.

Here, the Carrier maintains that all of the work performed by the Division Material Manager at Bensenville, Illinois, during the time period covered by the claims, was incidental to his regular duties. Moreover, it contends that much of the work complained of was de minimus in nature. The carrier argues that there is no documentation or examples of work allegedly done by its Material Manager to support much of the claims. When examples are provided, the Carrier argues that the amount of time needed to perform any of the tasks at issue was less than five minutes. Such a limited amount of time, it argues is clearly de minimus.

Accordingly, and for the foregoing reasons, Carrier asks that the claims be denied.

After careful review of the entire record, we are convinced that the claims must be denied.

The type of work at issue is clearly the Claimant's work. It is protected by Scope Rule 1 (d). It may not be assigned wholesale to the Carrier's managerial or supervisory employees.

However, the Agreement does not grant bargaining unit members an absolute exclusive right to perform the work in question. Scope Rule 1 (d) clearly implies that employees who are not covered by the Agreement may perform work covered by the Agreement which is incident to his or her regular duties. Thus, supervisory and managerial employees of the Carrier may perform bargaining unit work of a de minimus nature which is incidental to their regular duties.

After carefully reviewing the record evidence we are convinced that the Claimant has not presented sufficient evidence to make out a prima facie case in support of its claim. Part of the claims are not support by any documentation or examples of the type of work at issue. Bold assertions that bargaining unit work was performed by a managerial employee may not be substituted for evidence. Even when evidence is provided in support of the claims, they do not demonstrate anything other than the fact that the Carrier's Division Material Manager performed a de minimus amount of work covered by the Agreement which was incidental to his regular duties. That is clearly insufficient to establish a violation of

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the Agreement.

Accordingly, and for the foregoing reasons, the claims are denied.

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 9th day of November 1994.