

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30832  
Docket No. CL-31166  
95-3-93-3-142

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  
( Northern Indiana Commuter  
( Transportation District

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood  
(GL-10933) that:

1. Carrier violated the agreement when in January, 1992, it required and/or permitted an employe not fully covered by said agreement to perform work reserved to employes fully covered thereby;
2. Carrier shall now compensate Ms. Delores Gehrke eighty (80) hours' pay at the time and one-half rate of her position for this period."

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 Claimant in this case was assigned as a Traveling Auditor in the Finance Department and was headquartered at Carrier's Michigan City, Indiana, facility. The position to which she was assigned is fully covered by all of the provisions of the current Rules Agreement. By letter dated February 19, 1992, the grievance as outlined in the STATEMENT OF CLAIM, supra, was presented on behalf of the Claimant on the basis that certain passenger tariff work had been performed by a clerical employee who was not fully covered by all of the provisions of the Rules Agreement. During the claim period, Claimant was fully employed performing the duties of her regular assigned position.

The Board has carefully examined the history of the preparation of passenger tariffs as well as the Rules Agreements which resulted from the bifurcation of the previous properties and the creation of the current Northern Indiana Commuter Transportation District. It is not necessary that the complete details of these transactions as described by the parties be repeated here. Suffice it to say that the existing Rules Agreement, specifically the SCOPE rule, as adopted by the parties contains the following provision:

"MEMORANDUM OF AGREEMENT  
BETWEEN  
TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION  
AND  
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

The following agreement is reached in full and final settlement of the Section 6 Notices served by the Employees under date of May 27, 1988, and Carrier Notice served under date of June 8, 1988:

\* \* \* \*

III. RULE 1 - SCOPE AND WORK OF EMPLOYEES AFFECTED

A. Amend Section (d) to read as follows:

The position of Senior Financial Analyst is totally exempt from the application of this agreement.

Only Rules 1, 3, 4, 5, 6, 18 and 68 and Supplement Numbers 2 and 3 will apply to the occupants of up to three positions of Secretary, Administrative Department at the Dune Park (Chesterton, Indiana) general offices. They are excepted from all other rules.

It is further understood that occupants of these positions will only perform clerical work in connection with the administrative and managerial functions of the Carrier Officers in Dune Park (or its successor location) and will not be required or permitted to perform work currently assigned to positions not subject to this exception. It is recognized that the positions referred to herein may perform clerical work in connection with labor relations matters assigned to the District Counsel."

In accordance with the provisions of this amendment to the SCOPE rule, Carrier identified Ms. Lois Carlberg as one of the incumbents of the Secretary, Administrative Department positions identified in the amendment. This claim was a result of Ms. Carlberg preparing a passenger tariff.

There is no question but that both the Claimant and the employee who performed the disputed work are both covered by the negotiated Rules Agreement. The Claimant is covered by all of the rules of the Agreement; the employee who performed the disputed work is covered by certain of the Agreement rules which includes the SCOPE rule. Therefore, this is not a dispute dealing with the assignment of Agreement-covered work to someone outside of the Rules Agreement. Rather, it is a dispute dealing with the assignment of Agreement-covered work within the provisions of the Rules Agreement.

The Organization argued that historically the work of tariff preparation accrued exclusively to Clerks who were fully covered by the Rules Agreement. The carrier argued, among other things, that historically the work of tariff preparation was, in fact, performed by both fully covered clerical positions at Michigan City, Indiana, as well as by partially covered clerical positions at Chesterton, Indiana. It is uncontroverted that this instance is the first tariff issued since the break-up of the former properties and the creation of the current Carrier.

In support of its position, the Organization submitted two statements, both dated May 5, 1992, from clerical employees who indicated that they were familiar with the work involved in tariff preparation on the predecessor properties especially in relation to such work as performed in the former Chicago, Illinois, office as well as at Michigan City, Indiana. These two statements constituted the Organization's entire evidentiary support for their historical performance argument.

For its part, the Carrier presented statements which attested to the fact that prior to the break-up of the predecessor properties, tariff issuances and adjustments had also been prepared by clerical employees at Chesterton, Indiana, the same location at which the instant tariff was prepared.

On the basis of the relative convincing force of the evidence as presented in this case, the Board is unable to conclude that the Organization's position relative to the exclusive performance of tariff work by fully covered clerical positions can be upheld on the sole basis of the two statements from the Michigan City employees. The contentions of the Carrier relative to tariff preparation at Chesterton, Indiana, stands unrefuted. There exists, therefore, a contradiction of positions with no probative evidence to offset the stated contentions of the respondent. As the moving party, the Organization has the burden of support for their position. They have not in this instance met that burden. The Scope Rule amendment permits the partially excepted positions at Chesterton to "perform clerical work in connection with the administrative and managerial functions of the Carrier Officers in Dune Park . . . ." There is no proof in this case that anything other than such work was performed.

Therefore, the Board concludes that there was no proven violation of the Scope Rule as amended. Clerical work was performed by clerical employees who are covered by the Scope Rule in a manner consistent with traditional performance of such work. The claim here is denied on that basis. Because of this conclusion by the Board, the arguments raised by the parties relative to a proper claimant, qualification of the claimant, excessive nature of the claim, actual wage loss, etc. are moot and need not be addressed to effect disposition of this case.

**AWARD**

Claim denied.

**O R D E R**

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

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 27th day of April 1995.