

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30879
Docket No. CL-30591
95-3-92-3-361

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

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10801) that:

(1) Carrier violated and continues to violate the current Clerk's Working Agreement, specifically Rule 1 (Scope), when on April 26, 1989, it abolished and transferred to Detroit the Machine Operator #5 positions at Top End, Port Huron, Michigan, and subsequently required and/or permitted employees not covered by such agreement to perform work assigned to and performed by employees covered thereby.

(2) Carrier shall now compensate the senior qualified and available employee for each of the 0730, 1530 and 2330 shifts at Top End eight (8) hours overtime at the Machine Operator #5 rate of pay for each date from April 26, 1989, and for each subsequent date thereafter until the violation is corrected."

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 were given due notice of hearing thereon.

In this claim, the Organization disputes Carrier's action, effective April 26, 1989, eliminating certain clerical positions,

known as Machine Operator #5 at Top End, Port Huron, Michigan, and transferring these positions to Detroit, Michigan. The Organization alleges that the work historically performed by these positions - maintaining a current check of all cars that were being switched at Top End and doing certain associated telephone work - was improperly removed from the clerical classification when no clerical employees to these duties were left behind at Top End. In the Organization's view, these tasks were instead assigned to Yardmasters, Yard Conductors or Foremen. The Organization cites Rule 1(G) of the Agreement being violated. Rule 1(G) states:

"RULE 1
EMPLOYEES AFFECTED (SCOPE)

G. Positions 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 positions or work from the application of these rules, except by agreement between the parties signatory hereto."

The Organization also asserts that an identical issue between these parties was decided in Public Law Board No. 4415, Award 1. Therefore, the Organization insists that this Board is bound by that Award.

Carrier, on the other hand, urges that the claim is without merit. It argues that the Organization failed to meet its burden of proof of establishing that work was removed from the scope of the Agreement.

Carrier also maintains that the factual circumstances in effect in 1989, when the positions were abolished, are different than what was happening during the time frame which lead to the above-mentioned Award. Unlike the circumstances in 1983, Carrier notes that here, the positions were not eliminated, but instead the positions and work were transferred.

We find that Carrier's action violated the Agreement, Rule 1(G) a positions and work Scope Rule. We are persuaded that Carrier is incorrect when it contends that all work of the Claimant moved along with the positions to Detroit. Rather, we are persuaded that certain of the work responsibilities of those positions remained - precisely that being complained about by the Organization here after the position left Top End. The work that remained was performed by non-contract labor.

We agree with Carrier that the claim pursued by the Organization is excessive. We see no basis for the amount claimed. Instead, we conclude that the proper remedy is to pay one hour each time that there was a violation until the work is returned.

One final point. The Board feels compelled to comment about the Organization's failure to promptly provide Carrier the specifics about the alleged violations. There is no justification for the delays in supplying the specific information to Carrier. In fact, in other cases, this type of delay would be fatal to the Organization's position.

However, here, we are persuaded that the information was supplied in a timely enough fashion to constitute a timely claim. The Organization is placed on notice that it must, in the future, respond more expeditiously with specific, detailed information about alleged Agreement violations.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 10th day of May 1995.