

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30918
Docket No. CL-31020
95-3-93-3-14

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of
the TCU (10912) that:

- I. The following claim is hereby presented to the Company in behalf of Claimants K. Kramer, M. Hunt, T. Contro and T. Goergen. (861-92-DH002):
 - (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules when commencing on or about September 1, 1991, it assigned and permitted Yardmasters at SK Yard, Buffalo, NY, to perform clerical work through the installation of the Carrier's system entitled "Operation Control Systems" (OCS) such as, but not limited to: inputting and extracting data via a CRT Machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, making inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS System.
 - (b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereon, 24 hours a day, 7 days a week until this violation is corrected.

- (c) Claimants were qualified and should have been called in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.
- (d) That in order to terminate this claim, all clerical work must [be] returned to employees covered under the Scope of the Clerks' Rules Agreement.
- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

II. The following claim is hereby presented to the Company in behalf of Claimants D. Longtin, C. Carswell, Sr., S. Merchant, H. Borrie, K. Gregoire and C. Carswell, III.

Claim of the District Protective Committee (861-92-DH003) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about September 1, 1991, it assigned and permitted Yardmasters at Rouses Point Yard, Rouses Point, New York, to perform clerical work through the installation of the Carrier's system entitled "Operating Control Systems" (OCS), such as, but not limited to; inputting and extracting data via a CRT Machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, make inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS System.
- (b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereafter, until this violation is corrected.

- (c) Claimants were qualified and should have been called in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.
- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.
- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

III. The following claim is hereby presented to the Company in behalf of Claimants J. Gleason, K. Lenihan, D. Tully, and P. White.

Claim of the District Protective Committee (861-92-DH004) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about September 1, 1991, it assigned and permitted Yardmasters at Station Yard, Saratoga, New York, to perform clerical work through the installation of the Carrier's system entitled "Operating Control Systems" (OCS), such as, but not limited to; inputting and extracting data via a CRT machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, make inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS system.
- (b) Claims should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereonafter, 24 hours a day, 7 days a week until this violation is corrected.
- (c) Claimants were qualified and should have been

called in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.

- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.
- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

IV. The following claim is hereby presented to the Company in behalf of Claimants R. Rummenapp, M. Eggleston, L. Neff, D. Perri, E. Delanoy, J. Terrasavage, D. Pettit, D. Logan, P. Berg, A. Lindsey, S. Tocyloski and N. Jewell.

Claim of the District Protective Committee (861-92-DH005) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about September 1, 1991 it assigned and permitted Yardmasters at Binghamton Yard, Binghamton, New York, to perform clerical work through the installation of the Carrier's system entitled "Operating Control Systems" (OCS), such as, but not limited to; inputting and extracting data via a CRT Machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, make inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS system.
- (b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereafter, 24 hours a day, 7 days a week until this violation is corrected.
- (c) Claimants were qualified and should have been

called in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.

- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.
- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

V. The following claim is hereby presented to the Company in behalf of Claimant V. Lanzone.

Claim of the District Protective Committee that (861-92-DH006) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about September 1, 1991 it assigned and permitted Yardmaster at Kenwood Yard, Albany, New York, to perform clerical work through the installation of the Carrier's system entitled "Operating Control Systems" (OCS), such as, but not limited to; inputting and extracting data via a CRT machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, make inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS system.
- (b) Claimant should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereafter, until this violation is corrected.
- (c) Claimant is qualified and should have been called to perform the clerical duties claimed.
- (d) That in order to terminate this claim, all

clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.

- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

VI. The following claim is hereby presented to the Company in behalf of Claimants V. Salamas, L. Jones and J. Sudlesky..

Claim of the District Protective Committee (861-91-DH007) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about September 1, 1991 it assigned and permitted Yardmasters at Taylor Yard, Taylor, PA, to perform clerical work through the installation of the Carrier's system entitled "Operating Control Systems" (OCS), such as, but not limited to; inputting and extracting data via a CRT machine for the purpose of obtaining switch lists, crippling and releasing cars, maintaining an inventory as cars are switched within the yard, make inquiries to determine status of cars, and various other functions that Yardmasters will now do via the CRT in compliance with the Carrier's OCS system.
- (b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44 per day, commencing September 1, 1991 and continuing for each and every workday thereonafter, until this violation is corrected.
- (c) Claimants were qualified and should have been called in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.

- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.
- (e) This claim has been presented in accordance with Rule 28-2 and should be allowed.

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.

On or about September 1, 1991, the Carrier implemented an Operating Control System (OCS) which utilizes a main computer and associated peripheral equipment, such as a video display screen with keyboard and a printer. This peripheral equipment is located in the yard office in the various yards that are the subject of this claim and is used by the Yardmasters in connection with the performance of their duties. The following is the Carrier's description of the Operating Control System:

"With the OCS system, inbound train information is transmitted to the yard through the main computer. The yardmaster will view the advance train list and tell the clerk on what track(s) the train will be placed. The clerk records the information and thus establishes a train inventory. As a result of full integration with the Carrier's Fastway Waybill computer application, OCS automatically tags destination of an inbound car, eliminating the function formerly performed by a clerk. OCS also automatically provides properly sequenced train/track list to the yardmaster/clerical forces."

Any new data that is required to be updated, such as the diversion of a car, is entered into the system by a Clerk. The yard inventory can be viewed at any time from any location on the system which enables the Carrier to make better use of its various yard locations. Carrier is better able to plan and schedule trains on the system more efficiently.

If there is switching to be performed in the yard, the Yardmaster uses the keyboard to electronically make the switch lists instead of the old paper and pencil method. Upon completion of switching the cars to the designated tracks the switch crew notifies the yard master who, in turn, presses a command button on the keyboard and the computer automatically updates and resequences the yard inventory.

When a train is ready, the Yardmaster notifies a Clerk, who prepares the appropriate additional information either for sending a train consist for the departing train or preparation of an interchange report for another railroad.

The Organization's claim asserts the Carrier assigned Yardmasters to perform work reserved to clerical employees. Specifically, the Organization states the Agreement has been violated as a result of:

Yardmaster inputting and extracting data via CRT for the purpose of:

Obtaining switch lists;

Crippling and releasing cars;

Maintaining an inventory as cars are switched with the yard;

Making inquiries to determine status of cars;

Various other functions "that Yardmasters will now do via CRT in compliance with Carrier's OCS system."

In addition to arguing the claim should be sustained on its merits, the Organization also argued the Carrier failed to deny the claim in a timely and proper manner. With regard to the time limit issue, the Organization asserts it faxed the claim letters, which are dated October 29, to the Carrier on October 30, 1991. There is some dispute in the record as to the precise time the letters were faxed because it is not clear if the machines had been changed from Daylight Savings Time to Standard Time.

Nevertheless, the earliest they would have been sent was 9:54 P.M., and they were all received seven minutes later. The Carrier acknowledges receiving the claims via fax on this date, but asserts they were not presented to the proper Carrier official until the following day because the claims arrived after normal business hours. It further states it did not receive the originals in the mail until November 4, 1991. On December 13, 1991, the Organization agreed to extend the Carrier's time to respond to the claims by 30 days. The Carrier avers it issued denial letters on January 27, 1992. The Organization states it received the denials on January 29 in an envelope bearing a January 28, 1992 postmark.

Employing the generally accepted method of computing time limits, we find the Carrier's denial of the claim was within 90 days and, therefore, timely. The clock begins to run when the claim is filed with the officer of the Carrier authorized to receive same. The first day is the day following receipt. Although this Board has some question about the Organization faxing the claims at 10:00 P.M., or 11:00 P.M., well after the close of business, we will compute the time limit from that date, but we do so solely for the sake of argument. (In doing so, we are not finding that faxing a claim is an appropriate method, nor that the time of transmission is acceptable.) This, for our purposes, makes October 31, 1991, the first day. January 28, 1992 therefore, would have been the 90th day. By mailing the denial on that date (accepting the Organization's evidence regarding the postmark) the Carrier complied with the Rule. It is well settled that placing the denial in the U. S. Mail stops the time limit clock. The time the correspondence is within the control of the Postal Service is not chargeable to either side.

The Organization also argued the Carrier failed to state a reason for its denial of the claims. Our review of the letters of denial indicates the Carrier made reference to a Public Law Board Award it contends is applicable to this dispute. The letter concludes with the statement, "Per the above, your claim is respectfully denied." Although the denial is brief, it does give a reason and, therefore, satisfies the requirements of the Agreement.

Concluding that the claim is properly before this Board on the merits, we find the Organization failed to prove a violation of the Agreement. The applicable portion of Rule 1 - Representation/Scope reads as follows:

- "(b) This contract shall govern the hours of service, rates of pay and working conditions for employees of the Carrier engaged in work on positions to which this agreement applies as provided in Rule 31; i.e, Clerks Grade I, II and III. Positions and/or clerical duties shall not be removed from the application of Rules of this Agreement except by agreement between the parties signatory hereto or as provided herein.
- (c) Clerical duties covered by this Rule which may be incidental to the primary duties of an employee not covered by this Agreement, may be performed by such employee provided the performance of such duties does not involve the preponderance of the duties of the other employee not covered by this Agreement."

First, and most significantly, the record does not indicate the Carrier eliminated any clerical positions as a result of the implementation of the OCS. The burden, then, is upon the Organization to show the duties that had been performed by clerical employees have been "removed from the application" of the Agreement. While it is evident that some of the work disappeared because of the use of the computer, the Organization has not demonstrated that any of the clerical work has been transferred to Yardmasters. It should be noted that the Agreement specifically permits employees not covered by the Agreement to perform clerical work incidental with their own duties. At most, this is exactly what the Yardmasters are doing. As long as such clerical work is not the preponderance of the Yardmasters' duties, there is no violation of the Agreement.

AWARD

Claim denied.

Form 1
Page 11

Award No. 30918
Docket No. CL-31020
95-3-93-3-14

O R D E R

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 8th day of June 1995.