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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31018
Docket No. CL-31544
95-3-93-3-540

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 Organization (GL-10982) that:

The following claim is hereby presented to the Company in behalf of Claimant D. Gilchrist.

(a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rules 1, 5, 12, 13, Appendix I and other Rules, when effective on or about September 2, 1992, they removed position and clerical duties from the Scope of our Agreement by abolishing General Clerk Position #48, hours 0800 to 1630, location Clifton Park, NY and (admittedly) assigned a majority of the remaining clerical duties to non-agreement employe Joan Bellinger, and others, on a daily basis.

(b) Claimant should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64, commencing September 2, 1992, and continuing for each and every workday thereonafter, on account of this violation.

(c) That in order to terminate this claim, all clerical duties of position #48 must be returned to employes covered under the Scope of the Clerks' Rules Agreement.

(d) 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.

The content of the parties' Submissions requires commentary about the Board's scope of review. It is a long established and consistently applied requirement that we will not consider any evidence, argument or other similar information that is raised for the first time in the parties' Submissions to this Board.

In this dispute, it is clear that substantial portions of both Submissions violated the foregoing requirement. Oddly enough, both parties appear to be well aware of the requirement, for they both filed objections to the new information contained in the Submission of the other. As a result, we confined our review, as we must, to only those matters that were properly documented in the record of handling developed by the parties on the property.

The focus of this claim is the contention that the data entry duties of inputting invoice information into the Accounts Payable System, formerly performed by clerical Position #48, were removed from the scope of the Agreement and given to a non-covered supervisor. The Organization buttressed its claim with the October 9, 1992 letter of Carrier's Assistant Manager that read, in pertinent part, as follows:

"The duties of the position which covered the handling and filing of invoices were given to Mrs. Deborah Butler, General Clerk/Typist Position #42. The remaining duties, which were assisting Accounting Supervisor Joan Bellinger with entering invoices into the Accounts Payable System, were given back to Joan Bellinger due to the fact that the summer engineering production season was winding down and the amount of invoices to be entered could be, again, handled by the Accounting Supervisor alone."

In addition, the Organization provided two employee statements verifying that the data entry in question was being performed by the supervisor. One of them stated, "I was told personally by Joan Bellinger Accounting Supervisor that she has been instructed to begin the computer inputting on Sept. 1, 1992." (Emphasis added)

The Organization also supplied a handwritten listing of duties showing that 150-200 invoices per day required data entry. It coupled this information with the assertion that the number of invoices "... has not been reduced, only that the individual handling of same [sic] has changed from agreement covered employee to non-covered employees."

Carrier acknowledged receipt of the Organization's evidence. Nonetheless, Carrier never addressed itself to the disputed data entry work in the on-property record. Rather, it raised only two contentions in its behalf. First, in its December 4, 1992 response to the claim, it maintained that the duties of Position #48 were given to Position #42. Second, in its January 20, 1993 response, it reiterated its earlier position and also cited Rule 11(a), which states, "Nothing in this agreement prevents the Carrier from abolishing positions." Carrier's final contribution to the on-property record, a March 31, 1993 conferencing report, added nothing new.

The Scope Rule involved is a "Positions and Work" type of rule that prohibits the removal of duties performed by clerical employees except by agreement of the parties. After detailed review of the on-property record, we find that the Organization has sustained its burden of proving a continuing Scope Rule violation by both probative evidence as well as assertions of material fact that were unchallenged by the Carrier.

The Organization also has the burden of proof to establish the entitlement to the remedy sought. Damages do not automatically flow from a proven violation. The Organization did not challenge Carrier's contention that all but the data entry duties in dispute, formerly performed by Position #48, had been transferred to clerical Position #42. It is clear, therefore, that the Claim does not warrant the 8 hours per day sought. From the on-property record we know only that the disputed data entry consisted of 150-200 invoices per day. The Organization's on-property evidence provides little guidance concerning the time required to process this number of invoices. Accordingly, we find that only a nominal damage award of one hour per day is appropriate for each day of the continuing Scope Rule violation.

AWARD

Claim sustained in accordance with the Findings.

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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 26th day of July 1995.