Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31110
Docket No. CL-31517
95-3-93-3-491

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
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(Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization that:

(a) Carrier violated the current Clerks' Agreement at Topeka, Kansas, commencing May 1, 1990, when it began removing the work of billing for rental contracts between AT&SF and Patrons, maintaining the current addresses for the billing list and collections of unpaid rental bills on Position No. 6478 and Position No. 6473. This work is now being performed by Catellus Land Development Corporation, which permitted persons other than employes covered by the Clerks' Agreement to perform these historically assigned duties; and,

(b) Claimants Skaggs and Lancaster shall now be compensated eight (8) hours pay at the rate of $108.51 for Skaggs and $106.21 for Lancaster in addition to any other compensation received until work is restored to the Disbursement Accounting Department."

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 November 1, 1989, Carrier signed a contract with Catellus Land Development Corporation [formerly the Santa Fe Pacific Realty Corporation] to manage, maintain, lease, rent, and market for sale property not used for its railroad operating purposes. For a period of time subsequent to the agreement, Claimants performed the complained work of record keeping, until Catellus assumed its responsibility under the contract on May 1, 1990. On June 21, 1990, the Division Chairman filed a claim in behalf of Claimants alleging Carrier removed the work of billing for rental contracts, etc., from clerical employees and gave that work to Catellus. The claim was denied and subsequently progressed up to and including the highest Carrier officer of appeals. Following conference between the Parties on the property, the matter remained in dispute.

It is the position of the Organization that the work at issue was performed by its members exclusively until it was contracted out to Catellus, and that, since Catellus is wholly-owned by the Santa Fe Pacific Corporation, Carrier may not remove the work from Claimants. The Organization points out that the work in dispute was for the sole benefit of Carrier and under its complete control. It notes that the Board has consistently ruled that Carrier is not allowed to abrogate the collective bargaining Agreement simply because it might be more economical to do so.

The Carrier maintains at the outset that the work at issue is not exclusively reserved to the Organization either under the Rule 1 or Rule 2-E. (See Awards on Public Law Board No. 2281 and Public Law Board No. 3296). Further, the Carrier points out that the land at issue is not adjacent to nor used for railroad operating purposes. Rather, the land is leased for such functions as community gardens, storage facilities, and private businesses. Moreover, Carrier asserts that the work at issue was performed by Claimants for only such time as Catellus was unable to assume the tasks, thus it was in the nature of a temporary addition of work. Finally, Carrier notes that no positions were abolished and that Position Nos. 6478 and 6473 still handled railroad property used for railroad operating purposes.

In light of the foregoing, the Board is in agreement with Third Division Award 4683, which held in pertinent part:

> "... The common business of the Carrier and Organization is railroad operation, and it is to that business and the property employed in that business alone, that their Agreements apply. ...[W]here a Carrier owns property used not in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement."

In the circumstances of this case, the Organization has not shown persuasively that the work at issue constitutes railroad work reserved to, or consistently performed by them. (Contrast, for example Third Division Award 11733). Accordingly, the instant claim must be 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 1st day of September 1995.