

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31236
Docket No. CL-31453
95-3-93-3-447

The Third Division consisted of the regular members and in addition Referee Jacob Seidenberg when the award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(CSX Transportation, Inc. (former
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10969) that:

1. Carrier violated the Agreement on Monday May 21, 1990, at 8:00 AM, and continuing on a daily basis, when it failed and/or refused to allow Car Shop Clerk protecting Position No. 100, working 8:00 AM to 4:00 PM, to prepare and, where applicable, subsequently input, update, report and transmit via computer (thru CRT screen) and upon completion to file the following report and/or function and duties:

1. Home Shop Disposition
2. Baltimore Report
3. Car Detention Reports
4. Early Warning Letters
5. Outside Party Billing
6. Rule 95 - Defect Cards-Joint Inspection
7. Delay Reports
8. Performance Reports
9. FRA-State Inspection Reports
10. Wheel Inventory Reports
11. Material Management Reports
12. Heavy Bad Order Report
13. FRA 215.9 Report
14. Foreign Car Per Diem Release
15. Status Reporting-Shipper-Consignees-Customer Service

2. Carrier immediately caused, required and/or permitted Car Foreman and Carmen to perform these exact same duties and functions.

3. As a consequence of the above-described violation, carrier shall now be required to compensate the Senior Available Clerk, extra in preference, at the rate of \$104.70 for eight (8) hours' pay at either the straight or punitive rate, depending on availability, seven (7) days per week, until this claim is paid and its terms are satisfied in full, in addition to any other compensation received or entitled.

4. In addition, carrier shall advertise a clerical position to perform the aforementioned duties and functions, inasmuch as it abolished Position No. 100.

5. Carrier shall promptly provide payroll and any other appropriate records for a joint inspection, in order to determine Claimants and their proper compensation for these violations."

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.

As Third Parties in Interest, the American Railway and Airway Supervisors Association and the Brotherhood of Railway Carmen Division of the Transportation Communications International Union were advised of the pendency of this dispute, but neither Organization filed a Submission.

This dispute arises from the contentions of the Organization that Carmen at its Car Shop at Hamlet, North Carolina, are entering, inter alia, into the computer various reports listed in the Statement of Claim which work had formerly been performed by the Car Shop Clerk. The Car Shop Clerk's hours of service were 8:00 AM to 4:00 PM five days a week. The Organization states the violation commenced on May 21, 1990 and has continued to date. On July 9, 1990 the Carrier abolished the Car Shop Clerk's position.

The Carrier contends that this abolishment is the principal reason for the Organization progressing the claim. The Organization maintains that the Carrier aggravated the situation by directing the Car Shop Clerk to train the Car Foreman and Carmen to perform the same duties that the Car Shop Clerk had previously performed and these duties are set forth in the Statement of Claim.

The Carrier stated that in the course of progressing the claim on the property, the Organization withdrew items 9, 10, 11 and 15 from handling.

The Organization stressed the present Scope Rule is a "positions and work" Rule and not a general Scope Rule. The former meant that once "work" was assigned to the covered employees it could not be removed except by agreement between the Organization and the Carrier. The Organization adds that when the Carrier initially advertised the position of the Car Shop Clerk on September 6, 1989, the bulletin specifically described many of the position's duties and functions that the Carrier has now removed. The Organization further states that there are no provisions in the Agreement that allows the Carrier to remove work from the Clerk's craft because of changes in procedure or equipment in the performance of Clerk's work. The Organization maintains that the Carrier may abolish positions, but the work of these positions must be eliminated and not assigned to others outside the Agreement either directly or by indirect means.

The Organization alludes to General Chairman Tackett's letter of January 12, 1993 wherein he gave a detailed explanation of how the disputed work was being performed by Input Carmen, other Carmen, and Car Foremen. The Organization asserts that while the Carrier maintains that the claimed work had disappeared, through the elimination of the middle man, it also states that Carmen are using a computer to enter the data that was formerly entered by the clerical employees. It adds the Carrier's position is inconsistent when it maintains the work of data entry and transmission has disappeared, and on the other hand, admits the Carmen are performing the disputed work in lieu of writing out a report by hand.

The Organization asserts that data input and transmission is clerical work under the Scope Rule or otherwise the Carrier would not have established hundreds of clerical positions throughout its system to exclusively perform such a function if it was not work. In this industry it is the primary function of Clerks to report and record the work of the employees engaged in operations.

The Organization states the Carrier is in error when it seeks to classify the entry of information by clerical employees not as work, but merely as a means of submitting a report. The function the clerical employees were performing by entering the information into the computer system was the work in and of itself. The Organization adds the function was exclusively assigned to clerical employees and was being performed under the Agreement which classified the function as work, and the Scope Rule proscribes the Carrier from removing it from the Agreement.

The Organization states the installation of a new type of machine for the purpose of performing work not previously handled by such machine, is work that must be assigned to employees covered by the clerical Agreement, that is to say, changes in equipment used for the performance of work do not remove the work from the scope of the Agreement. This Board has held that work is the essence of a position and the Scope Rule embraces the type of work and the employees assigned to its performance.

The Organization maintains that the Carrier erroneously relied on Third Division Award 21475 wherein it was held that the Carmen were only using the computer to perform work which had previously been done by using a pencil. It adds this and other Carriers have sought to get everything imaginable within the parameters of that Award. The Organization stressed that Award 21475 held that a Yardmaster could use a computer keyboard to issue switching instructions that were formerly issued by using a pen and pencil. The Organization stressed that this Award was limited to this simple issue. It adds that the Carrier may not legitimize its assigning the manipulation of a keyboard to enter data into a computer system by contending that a pen or pencil is no longer used. It further adds that this defense will not prevail in this case. Because of the great volume of information that is contained in the various reports, it requires that this information must be recorded by pen or pencil in order that the entry be put into the computer. The Organization cites Award No. 115 - Appendix K on the Burlington Northern in support of its position.

The Organization also contends that the Carrier is in error in relying on the "6571" Award on this property. It states that the facts in that case are dissimilar to the facts of the present case. The Carrier there had added part of the information to the Form which had not previously been relayed by the clerical force prior to the implementation of the CRT input system. In the present case, the clerical forces had always input the data exclusively. The major error in that Award was providing that the input of data was not work per se but "methodology" which "eliminated" the step formally taken by clerical forces.

The Organization cites Third Division Awards 29619 and 29695 both of which sustained the Organization's position and the latter Award is on this property involving the Hamlet Motive Power Shop.

The Organization asserts that this Board in Third Division Award 29046 held that the nature of the work was the entry of the data into the computer system and that this work had not been changed nor had it disappeared. It was just performed by others. The Organization states that the Findings of Award 29046 should be applied to the instant case.

The Organization requests the claims to be sustained because the disputed work formerly performed by clerical forces is identical to the work being performed by Carmen, i.e., the inputting and transmitting of information into the computer system. Evidence that the work has not disappeared is shown by the Carrier's establishment of an Input Carman to perform the data entry.

The Carrier breached the Agreement by its removal of the work from the clerical forces and therefore the Board should render a sustaining award.

The Carrier maintains that the claim lacks merit because it has not violated the Organization's Scope Rule because there is no Agreement Rule that prevents it from changing the input by the Carmen craft. It adds it was not error for it to change the Carmen's manual procedure to an on line procedure of taking information on handwritten forms to enter into the computer which Carmen formerly gave a clerical employee to enter into a computer. In other words, Carmen were now entering the data directly into the computer which they previously wrote on a form or on a sheet of paper. The elimination of the clerical step is not a violation of the Clerk's Agreement.

The Carrier stresses that what Carmen formerly performed by way of handwritten data and information, is now directly input into the computer, and the intermediate step has been eliminated. The Carrier is aware that the Organization will reply that the work has not been eliminated but transferred. It is important to note that in 1988 the Carrier instituted a system-wide computer system that eliminated the need for mechanical employees (primarily Foremen and Supervisors) to feed clerical employees information to be inputted in the computer system. The Carrier states it is a system-wide computer program as evidenced by the number of claims filed on this property at various locations thereof.

Because of the system wide problem of computerization, the Carrier requests the Board to review this case on the exclusivity principle, i.e., that the Organization must prove exclusive rights to the clerical work on a system wide basis. The Carrier asserts the Organization does not possess this system-wide clerical right to exclusively input mechanical work, and the Scope Rule the Organization relies on is not applicable.

The Carrier cites examples of "CRT" cases which were handled differently at different locations because of a management style, skill, proficiency, and employee computer capability. For example, at the Hamlet, North Carolina, locomotive facility, the mechanical employees would eliminate the paper forms and clerical input to go directly to mechanical employees' input, while in the Hamlet Car Repair Shop clerical employees would perform input work until the mechanical forces became sufficiently proficient to perform their own work. The Carrier admits that some locations were more favorable for the Organization's position in disputes of this nature. The Organization had filed claims in every single facet regarding computerization at Hamlet, i.e., even when Trainmasters used computers to project the ready time for a departing train.

Under these circumstances, the Carrier asserts the Board should require the Organization to prove that it has exclusive rights system-wide to input mechanical work.

The Carrier states the Board should realize that computerization on this property has undergone dramatic changes since the initial claims were filed in 1988. It adds that many of the items listed in the Organization's Statement of Claim are no longer valid areas of work. It cites Item 4 - Early Warning Letters - no longer involved Carmen's work. It is an automatic function of the computer which designates certain cars which have suspected mechanical problems. The work basically involves tearing a list of cars off a printer. In any event the subject of Early Warning Letters is now performed at Jacksonville.

The Carrier stresses that technological advances in the Mechanical Department have caused changes so that many of the items in the Statement of Claim bear little resemblance to work. It notes that there is a distinct possibility of having a hand held computer, the size of a portable radio, used by a Mechanical Department employee working out in the field, to input data from a remote location about a bad order car and not have to come to the central computer station. This certainly is not work which had even been performed by clerical forces and makes input by mechanical employees totally removed from any clerical claim.

The Carrier asserts the Organization predicated its claims by the General Chairman sitting down at a computer terminal and pulling all mechanical work, records, reports and data with little regard to an honest factual account of the work previously and still being performed by clerical forces. It adds this is evident from General Chairman Tackett's January 12, 1993 letter which is extensive and as inaccurate as it is voluminous. The Carrier reviewed the 15 items in the letter and maintained that it can properly allow an employee to input directly into a computer that which he previously wrote on paper. The Carrier alludes to the fact that the employee whom it refers to as "Input Carman" was an employee who was listed and is still listed as "Freight Carmen Write Up", i.e., he wrote up reports and forms and is now performing that work directly via the computer.

In its review of the items of the Tackett letter of January 12, 1993, the Carrier notes that Item 2 (Baltimore Report) was never completed by a clerical employee; Item 3 (Car Detention Reports) was eliminated by the advent of the computer; Item 4 is automatically generated by the computer system (Early Warning Letters); Item 5 (Outside Party Billing) is still prepared by clerical positions; Item 6 (Defect Cards) original record of repairs, defect cards and first inspection have always been compiled by Car Inspectors; Item 7 (Delay Reports) were handled by the Customer Service Center in Jacksonville which notified customers of bad orders that could not be repaired in 24 hours. Such inspection is not confined to any one craft; Item 8 (Performance Reports) which reflected activities of Hamlet Car Shop and are now sent to Jacksonville through the Automated Message System. This report is now due at 7:00 A.M. before the Clerk reports for duty. It used to be done at 10:00 A.M. The Carrier states automation and time constrictions do not permit the Clerk to perform this work and it is work that has never been exclusively reserved to clerical forces.

The Carrier states that the Organization laid claim to all reports, data, forms for which the Mechanical Department is responsible. There are inconsistencies and false claims. Since the facts are not as represented by the Organization, the Board should decline to rule on claims in which there are incontrovertible factual conflicts.

Since the Hamlet Car Shop operates two shifts seven days a week, and the Clerical Position (No. 100) works Monday through Friday from 8:00 A.M. to 4:00 P.M., it was necessary for a Mechanical Department employee to perform the tasks of the second shift and on weekends. Therefore, the Carrier maintains the claim is excessive in seeking payment for seven days a week from May 21, 1990.

The Carrier states that in the exercise of its managerial rights it has the right to change or discontinue any report, form or format input thereof and such change is not subject to negotiations under the Railway Labor Act unless the Carrier has agreed to any limitation or restriction on its managerial rights.

The Carrier states it had not so agreed in this dispute. While the Organization states the Carrier violated the Agreement it only cited the Scope Rule, but cited no exact language of the Agreement that would support the claim or that the work was transferred. It adds the Organization's exhibits do not support the argument that the work was transferred. The Organization's arguments and evidence are either inaccurate or involved work which was previously furnished the Clerk by written means. The Carrier stressed the middle man process has been eliminated and not performed and the Organization failed to prove otherwise.

The Carrier asserts that it has every right to rely on technological advances. Absent a specific Rule providing otherwise, it has the right to manage its paper flow as it pertains to the work involved in this dispute. It adds that it did not transfer the imputing work from the clerical craft to the Mechanical Department employees. It simply allows for (1) a different format by the Carmen's craft to prepare these reports and (2) eliminates unnecessary duplicate work by the clerical craft.

The Carrier states the basic issue in this dispute is the difference between the stroke of a pen and the pressing of a computer key. The only change for the Carmen is in the "tool" they use in submitting their reports.

The Carrier asserts that the fact that employees may dislike the elimination of duplicate work does not justify a sustaining Award. The Organization has to show a violation of a Rule or an Agreement provision which it has not done.

The Carrier cites Award 1 of Public Law Board No. 3735 as being in point. It involved Carmen on the former Chesapeake and Ohio who had previously filled out handwritten car reports, and clerical forces entered this data into computers. The Carrier stressed that the furnishing of this data is work done in the past by Carmen be it by handwritten form or by computer screen. It would be improper to invest jurisdiction in another craft because the method of reporting has been automated. The work here has not been transferred but eliminated. The computer work performed by the Mechanical Department employees was that work in which they were directly involved. It was work which they wrote down and gave to the Clerk to input. The change in this format is not an infringement on the rights of another craft or class of employees.

The Carrier also contends that the operations of a computer terminal by members of any craft, incidental to their work, is as proper as the use of a pen, calculator, fax or copier or any other tool that is necessary to operate productively and efficiently. It adds to sustain the claim would support the proposition that the operation of a computer terminal in any capacity is inherently exclusive to the clerical craft. The Carrier cites a number of Awards that have denied this exclusivity to Clerks.

The Carrier states there is seldom an occasion when it institutes a technological change that it does not give rise to concerns on the part of the employees. In almost every instance the Organization attempts to claim the exclusive right to computer work. The Carrier adds it is unfortunate Third Division Award 29095 serves to make such technological changes more difficult. The Carrier states the Board in that Award did not address the principle that, although the Diesel Clerk was performing the work, it was an input which was provided by some Mechanical Department employees as a necessity.

The Carrier maintains that the Organization has not shown that the work was exclusively assigned to the clerical craft or that only Clerks historically performed the work in question. This is not so considering that the subject Clerk worked the first shift five days a week. The Carrier states that the record shows that the Mechanical Department employees were performing the work in question at the same time the clerical employees were performing it, demonstrating non-exclusivity. The Carrier asserts there was no violation of the Agreement because there was no proof offered to show that the Scope Rule exclusivity reserved the work to the clerical craft. The Carrier adds there was no evidence to show that the Carmen were required to perform any work that they have not historically performed. The introduction of computer technology to reporting information did not remove it from the purview of the Carmen and place it exclusively in the scope of another craft.

The Board should deny the claim as it is lacking in merit.

The Board finds that the Carrier committed no contractual breach when it permitted Carmen to input and transmit their reports, records and other relevant data via the computer located in the Hamlet Car Repair Shop. Nor was it a breach of the Scope Rule not to grant the Clerical forces the exclusive right to effect the input and transmission of the aforesaid material. Parenthetically, the Board is not certain whether all 15 items listed in the Statement of Claim are items of work performed by Clerks since the Carrier challenged several of these items. The Carrier conceded items 9 and 10 are work of Clerks and are presently being performed by them.

The Board agrees with the Organization that the input of records into the computer is work and not just a method. However, the essence of the dispute is whether this work should be performed by the Clerks or the Carmen. The Board concludes after close analysis that the Carmen should input their own work reports because these reports are reports of work that was integrally and causally related to the basic work of Carmen. They were not dealing with reports and records that were foreign and unrelated to the work of the Carmen's craft.

The Board cannot accept the position of the Organization that the clerical forces have a superior contractual right to input these reports unless one concludes that the clerical forces have an exclusive right or jurisdiction over any data that is to be inputted into a computer. The reports and records in question are not as integrally related to the work of clerical forces in the same way that these reports and records are related to the work of the Carmen's craft.

The evidence is clear that the clerical craft does not have an exclusive right to input and transmit work into a computer. Other crafts and classes of employees in this industry and on this Carrier input data into the computer such as Dispatchers, Yardmasters, Trainmasters and even Locomotive Engineers on road trains that are equipped with computers. The Clerk's craft does not have an exclusive right to operate computers. The Organization's Scope Rule gives it the right to execute those functions and duties to which it has a proper right to do. However, as in this case, when past practice and work history has vested in the Carmen's craft the right to draft reports as to its own activities, then changing the format of these reports does not deprive the Carmen of the right to execute these reports when inputting them into a computer.

The Board does not find it a strange and tortured concept for the Carrier to permit Carmen to report on work which is inherently Carmen's work. Reports prepared by Carmen in the Car Repair Shop are reports that are indigenous to Carmen's work regardless of the format used to effect these reports. To remove this reporting work and vest it in another craft is unreasonable and unfair.

The Board acknowledges that clerical forces performed work when they inputted into the computer the reports in question, but then so are the Carmen. The Carmen do not lose this right to perform this work because the format has been changed. There has been no change in the substantive nature of the work, but only in the method for transmitting the requisite information traditionally performed by the Carmen.

Since the Carrier asserts that it has been beset with many CRT claims on its properties, the Board wishes to make it clear that this Award is applicable only to the Car Repair Shop at Hamlet. The Carrier stated that there are differences at various locations in the application of CRT due to the state of the art, the extent of staff development and the compatibility of the employees and Supervisors toward computer use. It is for this reason that this Award is confined to the designated property and locality.

The Board reviewed the Awards cited by the parties and finds no reason for departing from the findings herein set forth.

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 November 1995.