

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31341
Docket No. CL-31435
96-3-93-3-74

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

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(Chicago South Shore and South Bend Railroad
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10925) that:

1. Carrier violated the agreement when on January 27, February 3, 5 and 11, 1992, it required and or permitted an employee not covered by the said agreement to perform work reserved to employees fully covered thereby.
2. Carrier shall now compensate the senior available off-duty clerical employee three (3) hours pay at the time and one half rate for the above referred to dates."

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 record shows that the Organization filed the instant case on March 9, 1993, with the Board. Within the requisite time period the Carrier filed its response. On November 4, 1995, the Board notified the Carmen's Division of the TCIU of the pending dispute and invited the Carmen's Division to file a Submission setting forth its position on the dispute, which it did on December 4, 1993.

The gravamen of the dispute is whether on the days in question the Carrier breached the Scope Rule of the Agreement because it permitted yard clerks to use for waybilling purposes a list prepared by Carmen of cars in the Yard.

In the past, yard clerks walked the Yard tracks and made a list of the car numbers and initials. From these lists yard clerks prepared their waybills. In recent days, the Carrier installed a system called RAIL NET camera. Under this system, cameras were installed at various locations throughout the Yard and monitors were installed in the yard office. As cars passed the cameras, a photographic record was produced and displayed in the yard office. The clerical employees viewed this picture and made a record of the car initials and numbers for entry into the computer. From this photographic record, the clerical employees did the necessary work incident to waybilling and switch lists for train crew use.

This particular claim arose because on three claim dates the photographic equipment malfunctioned. This made it impossible for the yard clerks to obtain the necessary records by the remote means. On previous occasions when such malfunctions occurred, the Carrier directed the yard and freight clerks to go to the actual location and make a physical check of the cars.

However, on the claim dates the Carrier did not order the yard clerks to make a physical car-for-car check for their use in preparing waybills and updating the Carrier's data base records.

It was this action that motivated the affected clerical employees to file this instant claim.

The Organization asserts the Carrier violated the Scope Rule of the Agreement when it required or permitted a non clerical employee to perform routine clerical work which is fully reserved to clerical employees by the Agreement.

The Organization maintains that when certain work is placed within the coverage of the Agreement by being assigned to clerical positions, such work becomes vested in the covered employees and the Carrier may not unilaterally assign the work to the non covered employees.

The Organization stressed that yard clerks always made yard checks for making waybills as well as for maintaining interchange records and updating the computerized car record system. This was done before modern technology was introduced on the property.

Modern technology changed the way the lists were prepared, but the work of copying car numbers on a switch list form was always performed by a clerk and modern technology only changed the manner by which the car checks were made, but not the responsibility for performing this work.

The Organization asserts the fact that the equipment was inoperative on the given days is no valid reason for violating the Agreement.

The Organization emphasized that it is the purpose for which a document is prepared which determines the type of work performed. The Organization adds it is irrelevant for the purpose of this claim that the Carrier required the Car Inspector to make a check of the cars which they inspect for their own work purposes. In the instant case, the document was used in lieu of a check which would have been made by a clerk if the equipment had been functioning properly.

The Organization asserts the facts of record clearly show that the Carmen violated the Agreement and therefore the Board should sustain the claim.

The Carrier denies that there is any merit to the claim because it did not violate any Agreement - Clerks or Carmen. The Carrier stated the Carmen, on the claim dates, did what they did every day, inspected the cars to see if they were "okay" or "bad order", but the clerks used the carmen's list of car numbers for their waybilling purposes instead of making their own list.

The Carrier asserts there was no Rule violation because the Carmen performed no clerical work. The Carmen only did their own inspection work, noting which cars were in bad order. The Carmen did not perform any clerical work because clerks never perform any car inspection work or note bad order cars on their lists. The Carrier maintains it was not a violation of the Scope Rule when a clerk used a carmen's list of car numbers to prepare waybills or update the data base in the computer.

The Carrier asserts no work was taken away from its clerks and given to another craft. It states the Organization is in error in alleging carmen performed clerical work by "checking" the car numbers. The carmen only performed car inspections and listed which cars were bad ordered and their location in the train. This has always been car inspector's work. The Carrier adds that even when the Rail Net camera is operative, clerks use the carmen-made lists to verify car numbers.

The Carrier stressed no work was taken away from clerks. The clerical work of sitting in front of the screen and copying car numbers was simply eliminated on the days when the Rail-Net camera was not functioning. The claim is without merit and should be denied.

The Carmen's Division of the TCIU in its Submission to the Board stated the work performed by the Carmen was not classifying of cars for waybilling or switching purposes. The Carmen's Division states carmen are required under federal law to make a mechanical inspection of the cars on inbound or outbound trains. They are required to record the initial and number of each car in the train and record on the Bad Order Tags the initials and number of these cars. This information must be transmitted to their supervisor upon their completion of the inspection of the train. The Carmen's Division states that the Carmen are required to furnish copies of their reports to the various appropriate department heads. The Division further states that the Carmen have performed the work in question without the clerks filing any previous claims. On the basis of the foregoing facts, it requests the Board to deny the claim.

The Board, on the basis of the record, finds that the Carrier did not violate the Scope Rule of the Agreement. The evidence reveals that the Car Inspectors performed their normal and regular duties incident to inspecting cars on inbound and outbound trains. In so doing the Car Inspector listed the cars and noted which cars were found to be bad orders. This performance of regular carmen's work did not take work away from the clerical craft. The fact is that the Clerks' Organization has not filed any prior claims, although carmen have been preparing the lists in question for a long time. Since the car inspectors only performed their regular duties of inspecting cars, the Board must hold that this work was not a breach or an invasion of the Scope Rule of the Agreement and must deny the claim.

Award

Claim denied.

Order

This Board, after consideration of the dispute identified above, hereby orders an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.