

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31419
Docket No. CL-29952
96-3-91-3-342

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10603) that:

- (1) Carrier violated the provisions of the Clerks' Agreement at Hamlet, North Carolina, on May 31, 1989, between the hours of 7:30 A.M. and 3:30 P.M., when it instructed and/or allowed L. S. Saunders (Carman) to input, update and record via computer (thru CRT screen) heavy bad order data regarding freight cars SBD 490518, SBD 142506 and CSXT 122618.
- (2) Carrier shall now compensate C. A. Ballard at the rate of Position No. 100 (104.70 per eight (8) hour day) at time and one-half for eight (8) hours (total amount due 157.05) in addition to any other compensation she may have received or entitled for this day.
- (3) Carrier shall now compensate the Senior Available Clerk, extra in preference, at the rate of Position No. 100, for all other violations at the appropriate rate, be it straight time or overtime, for the period beginning February 5, 1989, to and including June 5, 1989.
- (4) Carrier shall immediately restore all data processing and recording concerning heavy bad order cars at Hamlet, North Carolina, to Position No. 100."

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.

Prior to November 1, 1988, clerical employees at Hamlet were assigned the duties of updating and inputting into the computer data received from Carmen regarding Heavy Bad Order (HBO) freight cars. Effective November 1, 1988, Carmen began inputting those data directly, utilizing new electronic equipment and software.

On October 7, 1988, Carrier's Chief Mechanical Officer-Cars informed the Division Managers, Mechanical Superintendents and General Foremen of training classes being established throughout the system involving new procedures for the direct electronic input of HBO classification information. Classes were held at Florence, South Carolina, on October 18, 1988, to familiarize employees with the new system. Carman L. S. Saunders was elected to attend this training class, later returning to Hamlet to instruct other Carmen in the use of the CRTs.

An initial claim was filed by Clerk O. Hooks on February 6, 1989. The claim alleged a Scope Rule violation because, on February 5, 1989, Carman T. Nicholson had entered HBO data into the computer. Fifty-six additional claims subsequently were filed by various other clerical employees.

The claims were denied by Carrier's Trainmaster who maintained:

"Investigation reveals that on or about October 18, 1988, new procedures for electronic HBO classification input was established by the CSX equipment Group. Subsequent to that date, classes were held for AAR checkers, car foremen and write-up personnel to provide training on the new procedures. As a result of this training, the following has occurred:

1. The work referred to in these claims and implied to come under the parameters of the Scope Rule, of your Agreement, has disappeared as a result of technological changes which are contemplated by Article III, Section 1 of the Job Stabilization Agreements.

2. CRTs are used by supervisors, train and engine employees, carmen, yardmasters, dispatchers and clerks in order to carry out their usual and customary duties.

3. The carmen are simply "writing" electronically what they in the past had pencilled on a form and delivered to central location for duplicate electronic writing.

Inasmuch as carmen are charged with responsibility of determining the heavy bad order status of equipment and are simply using a CRT to electronically write this information, this work does not fall under the scope of your Agreement; therefore, these claims are without merit and are not supported by your working agreement, and are respectfully declined."

As a threshold objection, Carrier further noted that the initial claim exceeded the time limits of Rule 37(b) in that it was initiated some 98 days after the November 1, 1988 implementation date upon which the Carmen began inputting the data at issue into the CRTs. The Parties agreed to use one of the later-filed claims as a "lead Case," but the timeliness objections were preserved by Carrier throughout handling of this matter.

The Organization responded to Carrier's time limit objections by maintaining that clerical employees at Hamlet did not "become aware" until February 5, 1998 that Carmen had been inputting data through the CRT screen rather than furnishing data concerning HBO cars to clerical employees for input into the computer. Additionally and alternatively, TCU asserted that the claims were "continuing" in nature and could be filed under Rule 37 within 60 days of the most recent occurrence. Further correspondence between the Parties was to no avail. Therefore, the issue has been placed before the Board for resolution.

Rule 37(b) states that all claims must be filed within 60 days of the alleged violation. Training was completed, with the new procedure in place, commencing November 1, 1988. The gravamen of the claim occurred on a date specific and continued thereafter without change. It was not a cyclical or episodic occurrence, i.e., a "continuing violation" such as the issuance of a biweekly paycheck at the wrong rate of pay. The fact that Carmen were openly performing the disputed work for several months before the claim was filed establishes a prima facie case of untimely filing. Nothing in this record persuasively supports the Organization's assertion that Claimants did not or should not have known that Carmen were inputting the data directly for more than three months before the first claim was filed. The delay in filing these Scope Rule claims was fatal and requires dismissal without comment on the merits.

AWARD

Claim dismissed.

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 21st day of March 1996.