

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31475
Docket No. CL-31846
96-3-94-3-149

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

(Transportation-Communications International
(Union
PARTIES TO DISPUTE: (
(CSX/Sea-Land Terminals, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-11022) that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 1 and others of the Clerical Agreement, on December 21, 1992, when it allowed officers of the Carrier to perform clerical duties.
2. As a consequence of the above, Carrier shall compensate the Senior Available Clerk his guaranteed rate of pay for the date involved."

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 were given due notice of hearing thereon.

The Organization contends that the Scope Rule was violated by the Carrier. The Organization argues that a Management employee performed the work of filling out an outbound load list. This work, it alleges, is work protected under the Intermodal General Agreement and is assigned to and performed exclusively by clerical employees.

The Carrier denies exclusivity and the applicability of the Intermodal General Agreement of February 1, 1992. The Carrier maintains that the Intermodal Agreement did not alter prior non-

exclusive work and thereafter provide Scope protection to the Organization. The Carrier holds that the work does not belong to the employees. The fact that a Management employee filled out an outbound list rather than a Clerical employee does not demonstrate a violation of the Agreement.

The claim before this Board surrounds the above stated central dispute with numerous other issues. Yet, the dispute must remain grounded on whether the Organization provided sufficient probative evidence to prove that the specific task of creating an outbound load list is reserved by Agreement to Clerical employees. That task is not listed in the Scope of the Agreement, nor clarified and proven on property as an element of "yard inventory." While the Organization asserted that the performance of such work is exclusive to the craft, and provided a supporting statement and the list itself, the Board finds the evidence insufficient. The Carrier denied exclusivity and rebutted the Organization's support.

The Board is not insensitive to the surrounding issues, but does not find them on point. It is unnecessary, given our conclusion, for this Board to address the Carrier's arguments on a proper Claimant. It is obvious that the regularly assigned Inbound-Outbound Clerk did not perform his regularly assigned duties on the night of December 21, 1992. The evidence of record supports that the Carrier attempted to fill his Clerical position by first requesting the Clerk on duty to work overtime and then by calling Clerks to come in to work the vacancy. The record demonstrates that the work was performed by a Management employee only after clerical forces could not be found. Certainly the position was a Clerical position, to be filled by a clerical employee, but that is not proof that the singular work of filling out an outbound load list, which would have been performed by the clerical employee working that position, is exclusive, protected by Agreement, or is a type of work that no other employee or Management can perform.

The claim must fail for lack of proof that the specific work of filling out an outbound load list was protected by Agreement. The Carrier denied exclusivity, maintained Management employees had performed the work in the past and blanked the position. While much of the work not performed that date at the Baltimore Seagrit Ramp may have been Scope protected, the Inbound-Outbound list is not shown in this record to be exclusive prior to February 1, 1992, nor does the September 21, 1993 letter of support prove it to be exclusively assigned Clerical work. Accordingly, the claim must fail (See Third Division Awards 31104 and 31180 involving the parties to this dispute).

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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 25th day of April 1996.

LABOR MEMBER'S DISSENT
TO
AWARD 31475, DOCKET CL-31846
(Referee M. E. Zusman)

The Majority clearly failed in its responsibility to review and properly render a decision in this docket. The facts were ignored and the Majority issued its erroneous award to further deprive the Claimant of his/her contractual rights. The award is palpably erroneous and should not be considered as precedent.

The facts of this case are straight forward. On December 21, 1992, Clerk W. Oden reported for work at Baltimore Seagirt Ramp to protect his regularly assigned position of Inbound-Outbound Clerk. He was advised by his supervisor that Clerk Allen had marked off and that he would be required to work as a Gate Inspector. Mr. Oden inquired who would perform the duties of his regularly assigned position and was advised that management personnel would perform these tasks.

TCU Exhibits "A" page 2 through 8 and "E", page 3 attest to the fact that the disputed work has been assigned to TCU forces. TCU Exhibit "B", page 1 confirms the disputed work is routinely performed by Clerk Oden. That fact was reconfirmed by Ms. C. A. Sandler, Director of Labor Relations, in her letter of June 25, 1993, (TCU Exhibit "D", page 1) in the second paragraph wherein she stated: "As stated by Terminal Manager Morris Jones in his letter dated March 17, 1993, the work being performed, filling out an outbound load list, had been performed by a management employee only after no ISR could be reached to perform the work in question."

Armed with the aforementioned facts the Majority correctly concluded in the second paragraph on page two of the award that the vacant position was a clerical position which should be filled by a clerk, but was instead worked by management employee. Rather than enforce the Agreement the Majority then lets the Carrier off the hook by suggesting that there is no evidence that the singular work of filling out an outbound load list, which would be performed by the clerical employee working that position, is exclusive to the craft. **The Majority determination is refuted by the aforementioned Exhibits.**

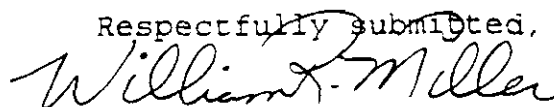
Aside from being incorrect about its exclusivity theory the Majority failed to recognize that was not the issue. It was not the issue because the Carrier never refuted the fact that a clerk was regularly assigned the work and routinely did it every day. Countless awards from this Board have stated that "exclusivity" is not the criterion for measuring whom the work belongs to when the Organization can show that its members routinely do the work. (See

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Third Division Awards 20556, 21497, 22749, 23031, 23032 and 26318 to name just a few. In the case at bar the disputed work was assigned to Mr. Oden's position of Inbound-Outbound Clerk and when Carrier Officer Sitar performed those duties she was doing protected work belonging to the TCU craft.

The Majority Opinion has erred, therefore, I strenuously dissent.

Respectfully submitted,

A handwritten signature in cursive script that reads "William R. Miller". The signature is written in dark ink and is positioned above the typed name.

William R. Miller
TCU Labor Member, NRAS
May 7, 1996