

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31610
Docket No. CL-31082
96-3-93-3-32**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company**

**STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10918) that:**

- I. The following claim is hereby presented to the Company in behalf of Claimants M. Stachura, K. Kraemer, T. Goergen and A. Contro:(861-92DH018)**
- (a) The Carrier violated the Clerks Rules Agreement effective September 24, 1990, particularly Rules 1, 5, 8, 10, 11, Appendix I and other Rules, when commencing on or about December 9, 1991, they abolished Yardmaster (craft) positions and began on a daily basis to divert Claimants from their regular assigned position and required them to perform duties of a craft not covered by the Clerical Rules Agreement.**
- (b) Claimants' should now be allowed an additional eight (8) hours pay based on the pro-rata hourly rate of \$18.92 commencing on or about December 9, 1991 and continuing for each and every workday thereonafter, that they are so diverted and on account of this violation.**
- © That in order to terminate this claim, Claimants' must not be diverted and required to perform duties of another craft not covered by the Clerical Rules Agreement.**

- (d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

II. The following claim is hereby presented to the Company in behalf of Claimants M. Stachura, K. Kraemer, T. Goergen and A. Contro:(861-92-DH019)

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, 8, 10, 11, Appendix I and other Rules, when commencing on or about December 9, 1991, they abolished Yardmaster (craft) positions and began on a daily basis to divert on duty Clerks' from their regular assigned position and required them to perform duties of a craft not covered by the Clerical Rules Agreement and failed to call Claimants' to fill the resultant clerical vacancies.
- (b) Claimants' should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64 commencing on or about December 9, 1991 and continuing for each and every workday thereonafter, on a continuing rotating basis, subject to their availability, on account of this violation.
- © Claimants' are qualified, available and should be called and worked in accordance with Rule 5.
- (d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

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 December 9, 1991, Carrier abolished Yardmaster positions at Buffalo, New York. Subsequent to those abolishments, the Organization presented a claim on behalf of Messrs. Stachura, Kraemer, Goergen and Contro when Carrier "diverted the Claimants from their regular assigned positions and required them to perform duties of a craft not covered by the Clerical Rules Agreement." The Organization submitted a second claim on behalf of the aforementioned individuals when Carrier "failed to call Claimants to fill the resultant clerical vacancies."

Carrier denied both claims maintaining that:

"In your letter you state that the Carrier does not have the right to abolish positions, diverting the duties to another position. In this particular case the duties that are being transferred are only incidental as they do not require the employees performing them to work overtime to complete the additional duties. These additional duties can be completed within a regular 8 hour shift along with the normal duties originally performed in these jobs.

These additional duties are, as mentioned in the Carrier's letter of March 25, 1992, incidental and certainly do not form the preponderance of work to be performed. I fail to see how the Carrier has been in violation of Rules 1, 5, 8, 10, 11, Appendix 1 or any other Rules as contested by the Organization."

The General Chairman replied to Carrier noting that the duties involved could not be viewed as "incidental when those duties and responsibilities are being required of the Claimants for no less than eight hours a day." The General Chairman went on to note that:

"The Carrier does not have the right to abolish positions of one craft (yardmasters) and arbitrarily divert the employees covered by another craft (clerks) to perform resultant duties of same."

Further correspondence between the Parties did not bring about resolution to the issue. Therefore the dispute was submitted to the Board for adjudication.

Rule 1-Scope of the TCU Agreement is a so-called positions and work Rule which protects against encroachment upon work which it reserves to employees covered by its terms. However, that Rule provides no basis for the present claim in which the allegation is that TCU-Agreement covered employees were used to perform the work of a different craft. There is no demonstrated violation of the TCU Scope Rule on this record, nor for that matter, of Rules 5, 10, 11 or Appendix I. Those aspects of the dispute must be put to rest.

The only viable basis for the claim is the allegation that clerical employees were "required to suspend work during regular hours to absorb overtime," in violation of Rule 8. Carrier put the factual predicate for that claim in issue by maintaining throughout handling that the former Yardmaster work assigned to Clerks was merely "incidental;" specifically answering the Yardmaster's telephone and communicating instructions left by a Yardmaster to train crews by radio after the Yardmaster had gone off duty. Appendix I of the TCU Agreement lists among Train Clerk duties "incidental duties as may be assigned." The record is insufficiently developed on that critical point to permit an informed judgement by this Board and the onus of that insufficiency falls upon the moving Party with the burden of proof, in this case the Organization.

AWARD

Claim denied.

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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 29th day of August 1996.