

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31648
Docket No. CL-31019
96-3-93-3-15**

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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-10915) that:

The following claim is hereby presented to the Company in behalf of Claimant L. Jones. (86-92-DH008):

- (a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 5, 12, 13, Appendix I and other Rules, when commencing on or about December 9, 1991, they abolished position of Train Clerk, Symbol #17, rate of pay \$13.44 per hour, located Taylor Yard, Taylor, PA, in place of retiring Clerk V. Slamas, and then assigned the duties of that position to Yardmaster J. Kilcullen on a continual basis.**
- (b) That Claimant L. Jones now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.44, commencing December 9, 1991, and continuing for each and every workday thereon after until this violation is corrected.**
- (c) Claimant was qualified and should have been recalled in seniority order to fill this position.**
- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the Clerks' Rules Agreement.**
- (e) 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.

Effective December 9, 1991 upon the retirement of the incumbent, the Carrier abolished Position #17, Train Clerk, at Taylor, Pennsylvania. Prior to the abolishment, the duties of this position were as follows:

Compile and transmit train/arrival departure reports

Compile and transmit train interchange reports

Communicate with all connecting railways on matters of interchange discrepancies (IVS)

Compile and transmit interchange correctors

Report interline received traffic (IRWB)

Compile and provide train crew with required train documentation (Journal/Profile)

Protect and provide train crew with required dangerous commodity documentation

Protect and provide train crew with highwide authority messages

Report placement of traffic at customer sidings

Handle waybills with connecting roads/trains and tranfaxes local waybills to Head Office for terminations

Protect train documentation/reporting received by transfax

Update waybills re diversions as required

Update Inventory System (Yardex)

Physically verifies all traffic received in interchange

Print and deliver S2-MR messages

Compile reports/messages as directed by supervisory staff

Maintain files as required

Handle Custom documentation as required

Must have ability to use designated office equipment (VDU/PC/ETC) to perform assignments

Incidental duties as may be assigned

To effectuate the abolishment of this position, Joan Dillon, Assistant Manager - CATS, issued a memorandum concerning the distribution of assignments from Taylor, Pennsylvania. According to this memorandum the following customer service duties were transferred to the CATS Department in Clifton Park, New York:

Notification of arrival of customer cars

Constructive placement notices to customers

Cars released by customers to CATS

Switch lists for customer cars to be placed or pulled to Taylor yard

Demurrage records and calculation

Miscellaneous billing for accessorial charges

Forwarded (outbound) waybilling

In addition, the following computer input duties were transferred to Binghamton, New York:

Yardmaster to maintain yard inventory via OCS

Yardmaster to perform physical checks as required

The Organization asserted the Carrier violated Rule 1 - Representation/Scope by permitting and requiring the Yardmaster to perform clerical duties. That Rule reads in part, as follows:

- (b) This contract shall govern the hours of service, rates of pay and working conditions for employees of the Carrier engaged in work in positions to which this Agreement applies as provided in Rule 32, i.e., Clerks Grade I, II and III. Positions and/or clerical duties shall not be removed from the application of Rules of this Agreement except by agreement between the parties signatory hereto or as provided herein.

© Clerical duties covered by this Rule, which may be incidental to the primary duties of an employee not covered by this Agreement may be performed by such employee provided the performance of such duties does not involve the preponderance of the duties of the other employees not covered by this Agreement.

In progressing its claim, the Organization asserted the Yardmaster performs additional clerical duties not covered by Dillon's memorandum.

The Carrier has not denied the Yardmaster is performing work that had previously been performed by the incumbent of the Train Clerk position. It insists, however, that the clerical duties remaining at Taylor are not sufficient to justify the employment of a Clerk. The Carrier further asserts these duties are such that they are not performed on a daily basis and do not constitute the preponderance of the Yardmaster's duties. On this point, the Carrier relies upon Rule 1© as its basis for allowing the Yardmaster to perform work that would otherwise be performed by a

clerical employee.

While the Organization is correct that a "position and work" Scope Rule, such as the one involved herein, generally prevents the assignment of clerical work to employees not covered by the Agreement, we find paragraph © of the Rule to be a limitation upon the broader language of paragraph (b). It specifically permits non-covered employees, such as Yardmasters, to perform clerical work, but only if such work is incidental to the employees' primary duties and the performance of such duties does not involve the preponderance of the employees' duties. In applying both of these tests, we find that the Organization's claim must fail. As the employee who is responsible for the direct supervision of yard forces and the operation of the yard, the Yardmaster may perform the work cited by the Organization as it is incidental to the duties and responsibilities of that position.

Secondly, the Organization has the burden of showing that this work has become the preponderance of the Yardmaster's duties. There is no evidence of the amount of time the Yardmaster regularly spends, on either a daily or weekly basis, performing this clerical work. Accordingly, we must conclude the Rule has not been violated.

In reaching this conclusion, the Board has not considered the procedural arguments raised by the Organization as they were not made a part of the handling of this dispute on the property.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.