

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31657
Docket No. CL-32076
96-3-94-3-446**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-11079) that:**

- (a) The Carrier violated the Amtrak Northeast Corridor Clerks Rules Agreement specifically the Scope Rule, Rule 1-B-1 and other applicable rules when on November 21, through December 13, 1991, 6 people from a temporary outside agency were allowed to come into the Payroll Department and perform the duties of the regularly assigned Entitlement Clerks. Ms. Joan Kelly, Mr. Kenny Goggins, Ms. Janice Martin, Ms. Veronica Nicholson, Ms. Deanna Farrell, and Mr. Michael Capobianco are senior, qualified and should have been asked to perform these duties.**
- (b) Claimants be paid from 8:00 a.m. until 6:30 p.m. a total of 10 ½ hours from November 21, 1991, through December 13, 1991, on account of this violation.**
- (c) Claimants were available and would have performed the duties given to these non agreement people had they been asked.**
- (d) These claims are being presented in accordance with Rule 7-B-1 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 were given due notice of hearing thereon.

This claim results from the contracting of certain timecard work in the New York office to employees of a temporary agency. The Joint Statement of Agreed Facts reveals that Amtrak was directed to provide information in connection with a lawsuit that required review of timecards in conjunction with document production. In order to timely comply with this directive, it was necessary for the Carrier to employ the service of a temporary employment agency. The agency provided 5 temporary employees for the workweek December 2 through December 9, 1991, and 8 temporary employees for the workweek December 9 through 13, 1991. These employees worked a total of 63.5 hours and 236.75 hours respectively, in those workweeks.

The Organization contends that the work performed by these temporary employees includes duties normally performed by Entitlement Clerks, and such work is protected under the Scope Rule of the Agreement. Third Division Award 30786. It argues that the exclusivity doctrine does not apply to disputes involving outside contractors, citing Third Division Awards 11733, 13236, 13237, 14121, 23217, 25934, 25991, 29021, 29033 and 29034. The Organization requests specific monetary relief for the named Claimants during the period November 21 through December 13, 1991, arguing that this work assignment constitutes a loss of job opportunities for which damages are appropriate.

The Carrier argues that the work of searching records and pulling timecards relative to a lawsuit is not work that is normally performed by Entitlement Clerks or exclusively reserved to employees represented by the Organization under the general scope clause of the Agreement. It notes that both parties agreed that it was necessary to use outside forces to comply with the brief court-ordered deadline, and that the Organization did not challenge the Carrier's use of temporary employees to pull timecards in compliance with the court's order in Baltimore or Philadelphia. The Carrier contends that it has a right to contract out work so long as it does not result in employees being furloughed, and that it has a continuous history of doing so. Third

Division Award 29598; Public Law Board No. 2792, Award 1; Public Law Board No. 2172, Award 1; Public Law Board No. 4304, Award 20. It argues that the Organization failed to sustain its burden of proving that the work in question was performed by, or reserved to Entitlement Clerks, or that there was any loss of earnings during the time period in dispute.

A review of the record on the property convinces the Board that the Organization failed to sustain its burden of proving that the work in dispute was that which is normally performed by Entitlement Clerks. The payroll Entitlement Clerks handle time allocation of employees and input appropriate information from timecards into the computer to generate paychecks. The record reveals that the work assigned to the temporary employees during the December 2 through 13, 1991 period in issue was searching various boxes and making Xerox copies of timecards pertinent to the court's order of document production. A mere allegation that timecards were involved does not meet the burden of proving that Entitlement Clerks have performed this function in the ordinary course or as a result of prior court orders. Further, the parties agreed that the use of a temporary employment agency was necessary in order to comply with the court's directive in this case. Absent a showing that the work in dispute is normally performed by bargaining unit employees, there can be no violation of the general scope clause of the Agreement.

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 29th day of August 1996.