

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31896  
Docket No. CL-31913  
96-3-94-3-226**

**The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Seaboard Coastline  
( Railroad)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11031) that:**

- 1. Carrier violated the Agreement (Scope Rule) when, at the close of business August 11, 1992, it abolished Position No. 3AKC-100, AAR Clerk at Uceta Repair Shop, Tampa, Florida, and assigned duties of AAR Clerk to Carmen and Supervisors.**
- 2. Because of the above violations, Carrier shall now be required to compensate the Senior Available Employee, extra in preference, at the rate of \$107.84, for each day of violation until such time as the duties and functions are returned to the TCU Scheduled Agreement."**

**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.

As Third Party in Interest, the Brotherhood of Railway Carmen, Division of Transportation Communications International Union was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

Rule 37(c) of the Agreement reads in pertinent part as follows:

**"... All claims or grievances involved in a decision by the highest officer shall be barred unless, within nine (9) months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board . . . ."**

In the claim here under review, the "highest officer" (the Senior Assistant Vice President, Employee Relations) declined the claim by letter dated April 14, 1993. The claim was reviewed in conference on May 12, 1993, and the highest officer recorded the results of this conference by letter dated July 30, 1993, confirming his earlier finding that the claim was "without merit" and "procedurally defective."

The Organization served notice, by letter dated April 20, 1994, to the Board of its intention to file a Submission for the Board's adjudication of the claim.

As pointed out by the Carrier, this notice was in excess of nine months from the highest officer's decision on April 14, 1993. However, the Carrier's July 30, 1993 letter states as follows, without further elaboration:

**"The time limits were extended to August 1, 1993 by mutual agreement between our respective offices."**

In view of an agreed time-limit extension, it is reasonable to use August 1, 1993 as the starting point of the nine months; by doing so, the Board finds the referral to the Board by April 20, 1994 is appropriate.

As to the merits, the Carrier abolished an AAR Clerk position at Uceta Repair Shop on August 11, 1992. The Organization argues that the work simply did not

disappear, but was assigned to employees not covered by the Scope Rule, referring in particular to Rule 1(d) which reads as follows:

“(d) Positions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations. It is understood that positions may be abolished if, in the Carrier's opinion, they are not needed, provided that any work remaining to be performed is reassigned to other positions covered by the Scope Rule.”

The Carrier contends that the duties either were assigned to another clerical employee “covered by the Scope Rule” (at a different location) or were of a nature not exclusively assigned to Clerks. It is the Organization's burden to prove the work was inappropriately “removed from . . . coverage,” and convincing evidence to this end has not been provided.

#### 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 4th day of March 1997.**