

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32007
Docket No. CL-31809
97-3-94-3-82**

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 Chesapeake and
(Ohio Railway Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11010) that:

Claim of the System Committee of the Union that:

(a) The Carrier violated the terms, conditions and addendum of the Clerical Agreement when on October 23, 1992, it allowed and required Train and Engine service employees, not covered by the terms of the TCU Agreement, to perform the duty and function of completing switch lists, double overs, and inputting switching information via the computer, work historically assigned to and exclusively performed by TCU Clerical Employees, and

(b) The Carrier shall now allow Claimants M. W. Payne, Jr., L. C. Vaughan, A. S. Moss, D. L. Tignor, L. C. Winchester and P. R. Smith, their replacements or successor, eight (8) hours pay at the straight time rate commencing on October 23, 1992, and continuing until this work is returned to the Clerical class and craft."

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 United Transportation Union was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim concerns the Carrier's installation of computer terminals designated by the Carrier as Conductor's Work Station ("CWS") within the Richmond Terminal on C&O Clerical Seniority District No. 5. According to the Organization's definition, the CWS system was "designed and intended to facilitate the direct adjustment and maintenance of yard inventory by Yard Foremen and other T&E personal (sic) from trackside locations within yards and terminals." Stated briefly, the Organization contends that the entry of such data into the computer system is work which was improperly removed from Clerical employees.

The Organization also argues that the claim must be sustained based on an alleged violation of the claim handling procedure. The Organization notes that the initial response to the claim was from a Carrier representative other than the one to whom the claim was properly addressed. Further, the Organization contends that the reply was defective in that it provided "absolutely no reason or explanation as to why the claim was disallowed."

The applicable Agreement provision is Rule 27½, which states in pertinent part as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed,

notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."

The Carrier reply to the initial statement of the claim said only that the claim was denied because "it is not supported by agreement rules."

As the Carrier points out, Rule 27½(a) does not specifically require that the same official who received the claim must answer it; the Rule simply says "the Carrier." While it is reasonable that the official to whom the claim is addressed should formulate the reply, the Rule simply does not require this. As to the reply itself, such summary statements have been found inadequate to meet the requirement for giving written expression "of the reasons for such disallowance." Any general use of such approach would be unacceptable and subject to remedial action. In a single instance as cited here, however, there can be no mandate to sustain the claim. This is particularly true because subsequent claim handling correspondence expressed the Carrier's position in detail.

As to the merits, the Board finds that Public Law Board No. 3545, Award 131, involving the same parties, reviewed the virtually identical situation at a different location. That Award reviewed many if not all of the same arguments set forth here. It concluded as follows:

"The Board, having carefully reviewed the entire record, concludes that under the particular circumstances of this case, the new means of transmitting information regarding switch lists, does not constitute a removal of work from employees covered by the Scope Rule of the Agreement. In fact, no removal of work has been established, but rather in this particular circumstance, a step has been eliminated. In short, the use of the CRT to transmit information, rather than telephone or radio, does not constitute a violation of the Scope Rule. For that reason, the claim must be denied."

Many of the Awards cited by the Organization referred to the nature of the "positions or work" Scope Rule, although none of these was centered on the precise operational change under review here. As to other cited sustaining Awards, Public Law Board No. 2668, Award 120 concerned Yardmasters actually taking over computerized "inventory control work" which had been performed by Clerks. Third Division Award 29046 involved mechanical employees who formerly made inspection notations in a

personal notebook, which were then entered on a form and eventually placed into the computer by Clerks. The change was that the mechanical employees continued to make their notebook entries, but were then directed to enter the information directly into the computer. Because there was simply a transfer of computer entry work, without elimination of the prior handwritten entries, the claim was sustained. Third Division Award 26942 concerned the transfer of certain computer work to personnel not employed by the Carrier.

In the Board's view, these cases cited by the Organization are all distinguishable from the issue at hand, while Public Law Board No. 3545, Award 131 is directly on point. The Board finds no basis not to accept the reasoning in Public Law Board No. 3545, Award 131 and make it fully applicable here. A denial Award is appropriate, rather than a dismissal Award, as urged by the Carrier, because Public Law Board No. 3545, Award 131 was not issued until December 31, 1993, well after the claim here under review had been appealed to the Carrier's highest designated officer.

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 6th day of May 1997.

LABOR MEMBER'S DISSENT TO
AWARD 32007, DOCKET CL-31809
(REFEREE H. L. MARX, JR.)

The Majority Opinion has erred and issued an award which is palpably erroneous depriving the Claimants of their contractual rights.

Although we may not be able to right the error we believe it is important that future readers of the Award be given a more detailed explanation so that they may fully understand how the Majority went astray. Therefore, the following is offered as a brief synopsis of the case at bar. On October 23, 1992, Carrier installed Crew Work Stations (CWS's) within the Richmond (Virginia) Terminal on C&O Clerical Seniority District No. 5. The CWS's were assigned to the exclusive use of T&E service employees at this and other locations as a direct link with Carrier's mainframe computer in Jacksonville, Florida. The CWS's were designed and intended to facilitate the direct adjustment and maintenance of yard inventory by Yard Foremen and other T&E personnel from trackside locations within yards and terminals.

By directing operating crews to use CWS's the Carrier enabled them, through direct interface with the host mainframe computer, to complete switch lists (orders) and make any and all necessary changes needed to update (edit) the standing order and disposition of tracks and rail cars within the

yard. The CWS's are located near tracks in the rail yard where members of the train crew may sit down and enter information.

The installation of computer work stations for the sole use of T&E service employees to perform inventory functions performed by Clerks, prompted the filing by TCU of a continuous claim on behalf of six named Claimants at Fulton Yard.

The Claimant's duties and responsibilities included the operation of data and office equipment, the input and keypunching of data into the Carrier's computer system in connection with consists, interchange, switch lists, and related yard and agency reports.

Before turning to the merits it is first necessary to review the Carrier's procedural errors in its mishandling of the initial claim which the Majority Opinion brushes aside. The continuous claim was filed with Mr. J. J. Kern, Division Manager, on November 4, 1992. It stands unrefuted that Mr. Kern is the duly authorized officer to whom claims are to be directed to. Carrier's declination of November 30, 1992, was authored by Mr. J. W. McCormick, TM/TSC. Mr. McCormick is not the designated Carrier Officer authorized

to receive and consider the claim. Rule 27½ of the Agreement requires that claims must be presented to the officer of the Carrier authorized to receive same. It further states, that should any such claim be disallowed, the officer of the Carrier authorized to receive same, shall so notify whoever filed said claim or grievance of the reasons. The Organization pointed out that fact in its appeal of January 18, 1993, (TCU Exhibit "4", page 3) to the highest officer designated to handle claims. In the Carrier's response of March 17, 1993, (TCU Exhibit "5") it did not take exception to TCU's position therefore it must stand as being factually correct and a clear violation of the Agreement. Therefore in accordance with Third Division Awards 11374, 16508, 17696, 22710, 23943, 25092 and 27501 to name just a few the claim should have been sustained as presented. Last, but not least I would point out that Mr. McCormick's improper perfunctory denial does not meet the standard this Board has historically required to even be considered an actual denial as it does not address any facts or arguments as set forth by the Organization.

Based upon the aforementioned procedural errors the Majority should have sustained the claim as presented.

Not only should the claim have been sustained on a procedural basis, the merits require the same.

A review of the historical evolution of the work in dispute reveals that on February 21, 1975, the Carrier served notice upon the Organization (TCU Exhibit "6") to transfer, combine, mechanize, consolidate and otherwise reorganize certain clerical functions at Fulton Yard, Richmond, Virginia and the concurrent establishment of procedures for mechanizing and handling yard and agency data at this location.

A Memorandum Agreement effective August 24, 1975, settled that notice and provided for the establishment of the positions identified as Inventory Control Clerks. The duties included yard and train check exceptions which were fully set forth in the Statement Showing Disposition of Duties (TCU Exhibit "8"). Section 7 of the Memorandum Agreement effective August 24, 1975, provided interalia that (TCU Exhibit "7"):

"It is further understood that all work of the craft and class of Clerical, Office, Station and Stores employees in the offices, departments and operations covered by this Agreement, including all supervision thereof, shall be performed by employees holding seniority rights in and assigned to locations and on the Seniority Districts as shown in this Agreement, unless otherwise agreed in writing between the Management and General Chairman of the Chesapeake & Ohio System Board of Adjustment."

With the implementation of the August 24, 1975 Memorandum Agreement, the newly titled clerical positions of Inventory Control Clerks located at Fulton Yard were assigned the duty of maintaining the yard inventory via the **Perpetual Inventory Car Location (PICL)** rack system.

The **PICL** system was ultimately replaced by a more advanced and modern method of car location and inventory which was implemented when Carrier notified the Organization on November 13, 1985 (TCU Exhibit "9"), that:

"Please consider this as proper notice of the Carrier's intent to transfer, consolidate and otherwise reorganize certain clerical functions performed at Newport News, Williamsburg and Richmond, Virginia, to the Terminal Service Center Operation on District Roster No. 5, Richmond, Virginia, on or about December 16, 1985.

"Briefly, this notice contemplates that the Terminal Service Center at Richmond, Virginia will be designated as the Transportation Service Center, Office of Division Manager, and certain clerical work presently performed at Newport News and Williamsburg will be transferred and consolidated with clerical work presently performed in the Terminal Service Center at Richmond, Virginia."

That notice did more than reorganize and consolidate clerical work from different locations to the new Transportation Service Center headquartered at Richmond Terminal, Richmond, Virginia. It also introduced the exclusive clerical utilization of the CRT into the newly evolved **Terminal Yard Management System (TYMS)**, which effectively replaced the **PICL** system.

A Memorandum Agreement effective January 6, 1986 was entered into between the parties which settled the above referred to notice and established the Transportation Service Center at Richmond Terminal. The following Sections of the Memorandum Agreement (**TCU Exhibit "10"**) provided:

"5. That certain clerical work at Richmond, Virginia, will be reorganized and various position reclassified as shown on Attachment 'A' and that all clerical positions at Richmond will be included in the Division Manager's Office force at Richmond. It is further agreed that all clerical positions at Newport News and

Williamsburg, Virginia, will be included in the Division Manager's office force at Newport News, Virginia.

"8. That it is further understood and agreed that all work of the craft or class of clerical, office, station or stores employees and offices and departments covered by this agreement, including all supervision thereof, shall be performed by employees holding seniority rights in and assigned to positions in the offices and departments at locations and on the seniority districts respectively, as shown in this agreement, unless otherwise agreed in writing between the Management and the General Chairman."

Further, the side letter of December 20, 1985, File: C-6-465.1, retained and reclassified the positions of **Inventory Control Clerk** to the new **Transportation Data Clerk** (TCU Exhibit "11"). In TCU Exhibit "10", page 7, the Summary Sheet set forth the Distribution and/or Redistribution of Work involved in that reorganization and it is clear from that document that all work previously assigned to the **Inventory Control Clerks** was transferred to the **Transportation Data Clerks'** positions.

The **Transportation Data Clerk** Disposition of Duties sheet describes the duties and responsibilities of that position as follows:

"1. Assemble, prepare, maintain, distribute, transmit and file various yard and agency records, reports, correspondence and documents, including the following:

'(a) Prepare waybills, classify, weigh cars and **maintain inventory** of rail cars, cabooses, engines and other transportation related equipment. Handle No-Bills/Over-Bills and High and Wide Shipments.

'(b) Operate data and office equipment. **Key punch data in connection with: consists, interchange, switch lists, waybills, shop reports, set-outs and other related yard and agency reports.** [emphasis added]

The newly implemented **TYMS** was an evolvement from the manual **PICL** system in that the new system utilized the **CRT** and switch lists (work orders) generated by the interfacing of other Car and Train programs. Those interfaces enabled the issuance of a work order (switch list) to a specific crew for completion. When that crew notified the **Transportation Data Clerk** that the work order was complete, the **Data Clerk** was then responsible for **inputting the information into the computer and making the appropriate additional keystrokes to instruct TYMS to update the inventory.** If the crew did not perform the switching work as instructed by the work order, then the

Data Clerk was again responsible for making the appropriate marks on the work order, thereby enabling the TYMS system to make the correct adjustments to the yard inventory.

It should have been abundantly clear to the Majority that the Carrier's requiring of T&E employees to perform work assigned to Clerks is a violation of Rule 1 which is a "position and work" scope rule. Especially in view of the fact that the record stands unrebutted that TCU has shown that clerical employees have historically performed the work tasks and duties associated with the input of information relative to car switching to the exclusion of all others and furthermore the specific duties in dispute were assigned by job duty sheets which became part of the Memorandum of Agreement. I would emphasize that we are not talking about unilateral Carrier job bulletins. The job duty sheets are part of the Collective Bargaining Agreement and the work in dispute was specifically assigned to the Claimant's positions. Directly on point is Third Division Award 24492 (TCU Exhibit "13") which involves the same parties to this dispute wherein this Board ruled that job duty sheets which become part of the Agreement

cannot be compared to job bulletins as the Carrier would suggest. The job duty sheets in this instance coupled with the Memorandum of Agreement and Scope rule protect the disputed work until the parties agree to make changes.

Contrary to the Carrier's suggestion which the Majority Opinion bought into there has been no elimination of the clerical step. The T&E employee still carries his switch list on which he manually keeps track of any changes and whenever he has an opportunity he goes to the strategically located CWS's and feeds that information into the computer. There was absolutely nothing presented within this record by the Carrier which would lead to a reasonable conclusion that the clerical work in question has been eliminated rather than transferred. Nor is there anything which remotely proves that the clerical work involved is incidental to the regular duties of T&E employees.

The Majority reliance upon Public Law Board No. 3545, Award 131, is misplaced as it involves a different location Jacksonville, Florida, and a different Agreement (Seaboard Coast Line). In view of the fact that the "position and work" Scope Rule requires examination of each location based upon its particular factual situation the Majority did grievous error when it

applied the location reviewed in PLB 3545 under a different Agreement with different facts to the Fulton Yards dispute which is covered by the TCU/CSX (Chesapeake and Ohio) Agreement. The decision in PLB 3545 should of had no bearing on the case at bar. Unfortunately, the Majority Opinion chose to follow an Award which is not on point..

The performance by non TCU represented employees of the productive work in dispute is precluded by the terms expressly stated in the Scope Rule and the Memorandum Agreements entered into. Carrier's change in methodology does not remove it from protective coverage.

A reading of the Majority Opinion reveals that it lost its way and rendered a decision of no redeeming value. Because of those errors 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 and title.

William R. Miller
TCU Labor Member, NRAB
May 6, 1997