

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32179
Docket No. CL-32486
97-3-95-3-385**

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

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11159) that:

- 1. CSX Transportation violated the Agreement at Georgetown, South Carolina, on December 6, 1993, when it:**
 - A. Abolished position 4F17-100 (Agent) and transferred a portion of his duties to the Customer Service Center in Jacksonville, Florida, without proper notice, and,**
 - B. Improperly assigned remaining duties at Georgetown, South Carolina, to non-represented employees.**
- 2. As a result of the aforementioned violation, Carrier shall now be required to:**
 - A. Return all work previously performed by Clerical employees at Georgetown, South Carolina.**
 - B. Compensate the Senior Available Employee, extra or unassigned in preference, eight (8) hours' pay per day at the rate of \$115.82 (rate of abolished position). This claim shall begin on December 6, 1993, and continue each and every day, seven (7) days per week, until violation is corrected."**

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.

On November 5, 1993 the Carrier served notice on the Organization to transfer agency and related functions from Georgetown and Florence, South Carolina, to the Customer Service Center in Jacksonville, Florida, and abolish the Agent-Operator position at Georgetown effective December 6, 1993.

On November 8, 1993 the Organization advised the Senior Assistant Vice President-Employee Relations that the notice of November 5, 1993 was improper because the provisions of the Customer Service Center Agreement required a 70 day notice. Carrier did not respond to the Organization, but proceeded to abolish the Agent-Operator position on December 6, 1993.

The Organization filed a formal claim with the Director-Customer Service Operations on January 24, 1994 asserting that the Agent-Operator's position was abolished without proper notice, and that the Carrier had improperly assigned the remaining duties to non-represented employees.

The Claim was declined on March 8, appealed to the Senior Director Employee Relations on May 6, conferenced on September 26, and declined on November 23, 1994.

Being unable to secure satisfactory disposition of the claim, the Organization filed it with this Board July 24, 1995, and it is now properly before the Board for adjudication.

Section 1 of the March 12, 1991 Agreement states:

“(1) Notice of positions to be abolished as well as positions to be established as a result of each transfer will be posted at locations on the seniority district involved with copies to the District Chairman 70 days in advance of the pending work transfer.”

The Organization argues that the Carrier’s 30 day notice to transfer work from Georgetown to Jacksonville and abolish the Agent-Operator position at Georgetown violates the Section 1 provision providing for a 70 day notice.

The Carrier agrees that a 70 day notice is required at locations where work is transferred to Jacksonville and position(s) are abolished and established at the Customer Service Center in Jacksonville. It argues, however, that the Agreement is silent in situations where work is transferred from a location resulting in abolishment of a position, but no position is established at Jacksonville.

The Carrier further states that in instances where it has transferred work from a location to Jacksonville and abolished a position but did not create a position at Jacksonville, it has been the practice to issue a 30 day notice.

The record before the Board reveals no denial of Carrier’s asserted practice. It further reveals that the Organization concurs that the Agreement is silent as to a 30 day notice, and agreeable to a 30 day notice in situations where work is transferred and position(s) abolished, but no position is established at Jacksonville.

This Board accepts the parties’ resolution of the notice issue and dismisses paragraph 1.A. of the Statement of Claim.

The Organization asserts that with the transfer of work and abolishment of the Agent-Operator’s position, the Carrier improperly assigned the remaining duties of the position to non-represented (Clerical) employees, and submitted documents designed to support its assertions.

The Carrier argues that the Organization failed to provide specifics regarding the identity of non-Clerical employees allegedly assigned to perform work of the Clerical craft along with dates, times and work performed. The Carrier further asserts that the

documents submitted by the Organization with its claim do not support the allegation that exclusively reserved Clerical work is being performed by non-Clerical employees.

Review of the Organization's claim and the record before this Board does not reveal that the Organization at any time alleged that work exclusively reserved to Clerical workers was being performed by other than Clerical employees. The Organization's claim clearly asserts that the Carrier improperly assigned the remaining residual duties at Georgetown to non-represented employees.

Our review of the information and documents submitted by the Organization to the Carrier represents what the Organization believed to be the "remaining duties" of the abolished position being performed by non-Clerical employees. The Carrier did not deny that non-Clerical employees were performing work previously performed by the incumbent of the abolished position. Instead, it rested its defense on the statement that no work exclusively reserved to the Clerical craft was being performed by employees of other crafts.

Exclusivity has no place in this dispute. Rule 1 - Scope, was amended on May 7, 1981, with the addition of a new paragraph reading:

"(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."

Subsequent to the amendment, the Director of Labor Relations issued an interpretation dated May 18, 1981 to Supervisors, reading in pertinent part:

"Rule 1 of the Agreement is amended with a new Paragraph (d) to provide that all work and positions now under coverage of the Scope Rule will not be removed therefrom except by agreement. This does not mean that we may not abolish unneeded positions. However, any work remaining from an abolished position must be reassigned to another contract position...." (Emphasis added)

The parties' Agreement makes it very clear that any work previously performed by the incumbent of the abolished position which remains to be performed must be reassigned to other Clerical positions. This is so even if the Carrier believes it to be an insignificant amount as there are no exceptions to the rule.

In Third Division Award 25918, the Board stated:

"The Carrier's contention that the work performed was excusable as 'de minimus' must fail in the absence of support in the Agreement. The Organization is entitled, consistent with numerous Third Division awards, to protect its jurisdiction against encroachments, however small; positions and work may be made up of many small duties and tasks, which are susceptible to erosion and entitled to protection."

Paragraph 2.A. of the Statement of Claim seeks a declaratory order returning all work previously performed at Georgetown, South Carolina, by Clerical employees. This relief is beyond the authority of this Board. Accordingly, that aspect of the claim is dismissed.

This Board agrees with Carrier's argument that the claim is excessive. From the record before the Board it appears that the abolished Agent-Operator position was a five day per week assignment. Further, it appears that a Swing Clerk position was established at Georgetown to work Tuesday and Thursday each week. This being so, there is no justification for a claim of eight hours per day, seven days per week. Inasmuch as the Organization has not proven that eight hours' work per day is performed by non-Clerical employees, we believe a more appropriate remedy would be three hours straight time pay per day, three days per week (Monday, Wednesday and Friday). Accordingly, the senior available employee, extra or unassigned in preference, as set forth in the Statement of Claim, shall be allowed three hours straight time pay for each workday, Monday, Wednesday and Friday, beginning December 6, 1993 and ending when the residual work of the abolished position is assigned to members of the Clerical craft in accordance with the provisions of Rule 1- Scope, paragraph (d) supra. Payments will be in addition to any other compensation received.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.