

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32213
Docket No. CL-31750
97-3-92-3-874**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10889) that:

- 1. Carrier violated the Scope Rule of the Agreement on January 4, 1991, when it failed and/or refused to permit Mr. John Walczynski and Mr. Donald Larson to do the work of retired Material Yard Clerk John Gellatly and used a Track Foreman instead.**
- 2. Carrier shall now pay four (4) hours at the time and one-half rate for November 24, 1990, and five (5) hours at the time and one-half rate for each and every day after January 4, 1991, that the clerical functions of retired clerk, J. Gellatly, are performed by the Track Foreman."**

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 Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

The Organization argues that Carrier violated the Scope Rule of the Agreement on January 4, 1991 when it assigned work of retired Material Yard Clerk John Gellatly to a Track Foreman. The Organization insists that the work in question constitutes clerical work within the Scope Rule. The Organization points out that the Scope Rule is a "position and work" Scope Rule and therefore, it need only prove that the work was previously performed by Gellatly, and is now performed by someone from another craft. It cites a series of Awards in support of this proposition.

The Organization asserts that the work in question involves track material transfers, handling of purchase order materials, weekly materials reports, the conducting of railroad wide material inventory and the input of some of this material into the computer. The Organization asserts that these functions have slowly and over time been added by Carrier to the Track Foreman's position in violation of the Scope Rule.

The Organization agrees that Carrier could have distributed the work formerly provided by Gellatly among the remaining Clerks in the Engineering Department. However, it argues the work is now being performed by non-craft employees in violation of the Scope Rule.

Therefore, the Organization insists that its claim is meritorious. It asks that it be sustained as presented.

Carrier, on the other hand, insists that no work reserved to Clerks has been transferred to employees not covered by the Agreement. Instead, it insists that the work previously performed by Gellatly has been reduced and streamlined through the use of

a computer and all remaining clerical functions of that position were distributed to other Clerks. In essence, Carrier asserts that the Foreman now has learned to access the system and obtain information from the computer which is no different than reading from a paper file.

We carefully reviewed the detailed Submissions. Suffice it to say that we recognize that certain of the allegations that clerical work previously performed by Gellatly are being performed by the Foreman. Obviously, we are unable to reconcile all of those disputes.

However, we are persuaded that certain work falling within this Scope Rule, which was previously performed by Gellatly, is now being performed by the Foreman. These functions primarily fall into the category of inputting. Under the parties' Agreement such inputting falls exclusively within the jurisdiction of the Organization. As such, we conclude that the Organization established a violation of the Scope Rule.

However, we are equally convinced that the Organization's claim is excessive. First, we note that even when Gellatly did the materials component of his job it was not a full-time position. Second, we agree with the Carrier that certain of the assignments done by Gellatly have now been eliminated as a result of computerization. In all, we will sustain the claim for one hour per day until the violation is ceased.

One final point. We also note that Carrier raised a laches defense on the basis that Gellatly was relocated to the main office more than 15 months prior to the first date in the claim. While we are sensitive to the Carrier's concern about the prompt handling of claims, we simply do not believe that this is a proper case for the application of the doctrine of laches.

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 17th day of September 1997.