

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33145  
Docket No. TD-32414  
99-3-95-3-292**

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

(American Train Dispatchers Department/International  
( Brotherhood of Locomotive Engineers

**PARTIES TO DISPUTE:** (

(Consolidated Rail Corporation

**STATEMENT OF CLAIM:**

“Consolidated Rail Corporation (Hereinafter referred to as the ‘Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers’ Department (hereinafter referred to as the ‘Organization’) in particular, when the Carrier authorized an employee not covered by this Agreement to input an initial personal injury report into the Carrier’s computer system at 8:52 AM on November 15, 1993. This work can only be performed by members of the Organization. The duties in position advertisements to the American Train Dispatchers specifically state the inputting of personal injury reports. If the Carrier cannot utilize the Asst. Chief Dispatcher on duty to input this report for which he is contractually responsible to so, the Carrier must then call another Asst. Chief Dispatcher to perform this work. Mr. P. W. Shifflet was on his assigned rest day and should have been called instead of using other personnel. The Carrier shall now compensate P. W. Shifflet one day at the overtime rate for Monday, November 15, 1993.”

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

**By a memorandum dated October 19, 1993, the Carrier's Director of Safety announced to management on the Harrisburg Division that effective October 23, 1993, responsibility for all inputting of safety related documents into the Carrier's computer system would be consolidated at Conrail's System Office Building in Philadelphia. Among the specific tasks identified as being consolidated at that centralized facility were "inputting, tracking, filing and reporting of personal injuries, F.R.A. train accidents, rail highway crossing accidents, Unusual Occurrence Reports, and S.T.O.P. program reports." Shortly thereafter, all such reporting ceased system-wide and eight clerical positions were bulletined at the System Safety Department in Philadelphia to support this realignment.<sup>1</sup>**

**On Monday morning, November 15, 1993, Safety Supervisor Matter input a Personal Injury Report at Harrisburg for a Conductor who had reported to work and left after an onset of dizziness.**

**On November 24, 1993 this claim was submitted on behalf of Claimant contending that the inputting of initial personal injury reports "can only be performed by members of this Organization." The claim seeks one day of pay at overtime rates for the November 15 incident. In discussions on the property, that contention was modified to assert that inputting safety records accrues exclusively to the Organization solely at Harrisburg, Pennsylvania.**

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<sup>1</sup>The Organization properly objects to Board consideration of evidence not produced in claim handling on the property, including Carrier Exhibits 9 (a), 9 (b), and 9 (c), pp. 1-4. None of this material has played any role in the Board's evaluation of this claim.

The Organization argues that Safety Supervisor Matter's activity was in violation of Rule 1 (d) Scope, which reads as follows:

**"It is agreed that any work specified herein which is being performed on the property of any former component railroad by other than employees covered by this Agreement may continue to be performed by such other Conrail employees at the locations at which such work was performed by history and past practice or agreement on the effective date of this Agreement; and it is agreed that work not included within the Scope which is being performed on the property of any former component railroad by employees covered by this Agreement will not be removed from such employees at the locations at which such work was performed by history and past practice or agreement on the effective date of this Agreement."**

The Carrier rejected the claim on grounds that the Organization has never enjoyed an exclusive right to the work of entering safety data; that such work both at Harrisburg and elsewhere historically has been done by other crafts, as well as Supervisors; that Mr. Shifflet is an improper Claimant because he was on a rest day when the disputed work was performed, and in no event would have been called to do it; and that completing the injury report took but a few minutes to accomplish, and the Claimant is thus complaining about a de minimis issue.

The Scope Rule in this instance is general in nature. In claim handling on the property, the Carrier asserted that failure to establish exclusive, system-wide performance of the work at issue was fatal to the claim under well-established Board precedent. That position sounds a favorite and familiar theme. Although this case presents additional collateral issues, upon review of the record and authority provided to it for consideration, the Board concludes that Carrier correctly identifies the governing principle and rightly maintains that there is no record support for proof of system-wide exclusivity.

Rule 1 (d) relied upon by the Organization does two things: it permits work that is covered by the Agreement, but historically performed by non-covered employees on other component railroads, to continue to be performed by non-covered personnel; and it reserves to the Organization work which was not Train Dispatcher work, but which historically had been performed by that craft at the time the Scope Rule was adopted. Thus, the Rule clearly has no application if the work at issue - in this instance the

completion of initial injury reports - was previously shared with other classes of employees.

The evidence of record demonstrating exclusive past performance of inputting initial injury reports consists of several job bulletins for Train Dispatchers at Harrisburg in which this task, among others, is referenced, and statements by the Claimant and another Dispatcher, largely identical in form, submitted 16 months after the grievance asserting that the "H" desk had customarily input initial injury reports. The second employee attested to his experience at the Harrisburg office since 1990. The Carrier does not challenge any of that documentation, but asserts that it has the weakness of all half-truths, since this work at the Harrisburg location also has been performed by other than Train Dispatchers, including TCIU-represented Accident Clerks.

The record evidence arrayed on the critical question of exclusivity thus appears to be in equilibrium - diametrically opposed statements of history backed in both instances by job bulletins sponsored by the partisans, posing a kind of "Did-too! Did-not!" standoff on the papers. The Awards of the Third Division, however, are generally consistent in holding that ". . . in applying scope rules, the Organization carries the burden of showing, through history and custom, that the work has belonged exclusively to the craft. See, e.g., Third Division Awards 14507 and 21479." (Third Division Award 22705)

We conclude, after carefully considering the Organization's evidence and argument, that compelling evidence of exclusive past performance of the work in question has not been demonstrated, and that denial of the claim is therefore required.

#### AWARD

Claim denied.

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**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 25th day of March 1999.**