

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33235
Docket No. CL-33599
99-3-97-3-38**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11683) that:

- 1. The Union Pacific Railroad Company violated the Rules Agreement effective October 16, 1993, as amended, when it allows and/or permits employees of the Carrier not coming under the Scope of the TCU Agreement to perform work of abolished Mechanical Clerk positions which have historically and by agreement been assigned to the clerical employees on the Union Pacific Railroad Company at North Platte, Nebraska.**
- 2. Carrier shall be required to compensate clerical employees G. R. Pierson, L. A. Andrews, J. L. Noonan, T. L. Kelley, V. Martinez, and/or their successor or successors, for eight (8) hours for each shift, twenty-four (24) hours each day, seven (7) days a week until settled.**
- 3. The Carrier shall be required to return the work in question to the Agreement employees of the Craft and Class represented by this Organization.”**

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 September 19, 1995 the Carrier abolished four Senior Mechanical Clerk positions and one Senior Mechanical Clerk/Vacancy Relief position within the North Platte Diesel Shop at North Platte, Nebraska.

On November 16, 1995 the Local Chairman of the Organization filed this claim. The Organization claims the Carrier violated the Scope Rule of the Agreement. It argues that the Carrier transferred work belonging to the craft to non-contract employees. While it states the Rule was violated it brings particular attention to paragraph 1(k) which reads:

“(k) Except as otherwise provided in this Agreement, positions or work covered by this Scope Rule belong to the employees covered thereby and shall not be removed therefrom except by agreement between the Director of Labor Relations and the General Chairman.”

On December 14, 1995, the Carrier responded to the Local Chairman denying the claim. In its letter the Carrier wrote in part:

“Notwithstanding the above, I find no basis for your contention that the Carrier violated Rule 1 of the current TCU Agreement. Further, nothing within the Scope of the Agreement restricts the Carrier from eliminating work or discontinuing various clerical efforts by technology through computerization. Account this work has been either discontinued or eliminated, it cannot be said that the work in dispute was transferred to other non-covered positions.

As concerns your statement that the work in dispute was assigned to Claimants both by Rule 1 and by bulletin, as well as custom and

practice, I find that you have failed to specifically identify what work the Organization has 'historically performed to the exclusion of all others.' As you may be aware, the work performed by Mechanical forces at the Service Track Facility is the same work that has been performed by these employees for many years. Also, it is identically the same work performed by additional Mechanical Department employees at two (2) adjacent locations within the North Platte Facility without objection from your Organization. In this regard, any attempt by the Organization to cite an alleged rule violation at this juncture would not be appropriate."

On February 7, 1996 the Organization's General Chairman appealed the claim to the Carrier's Highest Designated Officer. In response to the above cited denial the Organization responded as follows:

- "3. The Carrier's defense that the work in question had either been discontinued or eliminated is contradictory to the fact that the named claimants had been instructed to train the non-agreement employees, employees not coming under the scope of the Clerical Agreement, on the work in question. In fact, to the date of this letter, the named claimants still receive inquiries from the non-agreement employees on how to perform different duties and responsibilities."

The letter is void of any description of which clerical duties or work had been transferred to non-contract employees.

On April 25, 1996 the Carrier responded to the General Chairman's appeal. Carrier answered as follows:

"As was previously indicated to your Organization, there can be no basis for your contention that the Carrier violated Rule 1 of the current TCU Agreement as nothing within the Scope of the Agreement restricts the Carrier from eliminating work or discontinuing various clerical efforts by technology through computerization. Account this work has been either discontinued or eliminated, it cannot be said that the work in dispute was transferred to other non-covered positions.

Further, I note that you have furnished information with regard to the work that you contend was previously performed by clerical employees at North Platte, however, you have failed to identify any of the work allegedly being performed by non-agreement employees which is covered by the Scope of the Agreement. In this regard, you have failed to meet the burden of proof required to support your position."

The claim was further declined.

On December 9, 1996 the Organization wrote the Carrier in response to the April 25, 1996 letter. A close review of the letter shows again the Organization fails to cite what work has been transferred.

The Organization carries a heavy burden to prove the Carrier violated the Agreement. Mere allegations are not sufficient. At first glance, because of the number of jobs eliminated, one might assume the Organization is correct in its claim. However, this Board is not omnipotent. It is limited to the record before it.

In Public Law Board No. 4070, Case 50, involving the same parties as this dispute the referee held:

"A claim cannot rely upon allegations alone. Allegations must be substantiated, and the substantiation must come from the Organization as the complaining party."

In Third Division Award 16851 the Board held:

"It is fundamental that the Claimant must always present to this Board a preponderance of evidence to sustain his claim; the burden is on the Claimant to prove his case. We find no evidence in the record to sustain and/or support these contentions of the Claimant at the agency in question. Mere assertions are not evidence."

A review of the record in this case reveals it is lacking a scintilla of any evidence of any work being transferred to non-contract employees. The Organization has failed to meet its burden that the Agreement was violated.

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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 21st day of April 1999.