

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33411
Docket No. CL-34521
99-3-98-3-104

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11941) that:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly, Rules 1, 6, 7, 14, and other Rules, when on or about September 30, 1996, they abolished Claimant Ignéri’s position Clerk Typist/Timekeeper/Statistical Clerk-Vacation Relief, and then the Carrier assigned and permitted Laborer, Pete Santiago, to perform clerical duties of, but not limited to, those shown on Attachment ‘A’, which are duties that were removed from the abolished Clerical position, located at the Amtrak Maintenance Facility, Rensselaer, New York.
- (b) The duties shown on Attachment ‘A’, have been historically assigned to, and performed by, the clerical employees at this location, until September 30, 1996, when the Carrier arbitrarily and entirely removed same from Claimant Ignéri’s position.
- (c) Claimant Ignéri should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of her former position, commencing October 1, 1996 and continuing for each and every day thereafter, until this violation is corrected.
- (d) In order to terminate this claim all the involved duties must be returned to clerical employees.”

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.

This claim alleges Carrier violated the parties' Corporate Clerical Agreement by permitting a non-TCU employee to perform certain clerical duties previously performed by the Claimant, Rose Igneri, whose position was abolished. The Carrier denies violating any Rule Agreement. The Organization has presented no evidence on this record that the work in question, as stated in Attachment 'A': writing up of payment requests, filing, filling out LVA's, coding of payment requests, photocopying, mailing, and writing of letters, is reserved by custom and past practice to the clerical craft.

Assertions of violation need to be substantiated with evidence as stated in Public Law Board 5822 Award No. 4 wherein it's stated:

"...organizations must proffer probative evidence that the work in dispute is reserved exclusively to its members by past practice, tradition, or custom on a system-wide basis. This burden of proof was addressed in Award No. 1 of Public Law Board No. 2792 where, in pertinent part, it stated the following:

"...it has been established by a long line of precedent, which we are not at liberty to ignore, that the Organization must demonstrate by a preponderance of the evidence the existence of a longstanding, mutually acknowledged and uniform practice of assignment to and performance of the disputed work by the Agreement-covered employees, to the practical exclusion of all strangers to the Agreement."

The Boards position is further clarified in Third Division Award No. 19833:

"This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a

Carrier must not be found to guilty of such a severe violation without more than a conclusionary allegation, supported by a few isolated assertions which fail to specify with any degree of certainty the specific nature, times and amounts of removal. The burden of proof rests with the Organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the claimant to produce sufficient evidence to support the version of the facts upon which it relies. See AWARD 10067 (Weston). Here, we have just a fleeting glimpse of the asserted facts."

The Organization has failed to prove the aforementioned duties are exclusive to the clerical craft. By failing to specify this, they fail to carry the burden of persuasion.

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 13th day of July 1999.