

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34023
Docket No. CL-33320
00-3-96-3-813**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11472) that:

- 1. Carrier violated the Clerks’ Agreement effective December 1, 1980, when the work of physically picking up and delivering mail in the Division Office Building in Springfield, Missouri, was removed from employees under the scope of the Agreement and given to strangers to the Agreement.**
- 2. Carrier shall now be required to compensate the senior Available GREB or Extra List employee an additional two (2) hours compensation at the pro rata rate of File/Clerk Position 003 (\$105.50 per day) beginning May 17, 1993, and continuing each and every workday (Monday through Friday) thereafter until such time as the work is returned to and performed by a clerical employee.**

In the event there are no GREB or Extra List employees available, the claim shall be in favor of the proper respondent pursuant to Rule 37 (overtime) of the Agreement.

The amount of the claim is subject to future wage increases and is in addition to any other earnings received by Claimant(s) on the claimed dates.”

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.

Effective May 17, 1993, the Carrier announced the following change concerning the pick up and delivery of mail at its Division Office Building in Springfield, Missouri:

“Effective Monday, May 17, the Mail Room will discontinue delivering and picking up mail from the various departments in the building. Each department will be responsible for picking up their inbound mail from the Mail Room and delivering their outbound mail. The sorting of mail will be handled by the Word Processing Center.”

Effective end of duty May 31, 1993, File/Mail Clerk Position 003 (8:00 A.M. - 4:30 P.M.) assigned to the Service Center of the Division Office Building was abolished. One of the duties assigned to that position was the sorting, pickup and delivery of mail to and from the various departments.

The Organization concedes that some (“a small portion”) of the mail work performed by the abolished position was assigned to Clerical employees. The Organization contends that strangers to the Agreement are now performing the disputed work in excess of two hours per day in violation of the Scope Rule.

The Carrier defended the allegations on the property asserting that the work was not exclusively performed by Clerical employees and exempt employees have picked up their own mail in the past; all that happened here was that the “the Clerk’s former role as a middleman was eliminated” for a redundant position and that Clerical employees

now perform the work; any such work performed by exempt employees was incidental to their regular duties; and the work performed by the exempt employees is de minimis.

The Scope Rule is a “positions and work” Scope Rule. Rule 1(A) states that “[w]ork now covered by the Scope of this Agreement shall not be removed except by agreement between the parties.” “Positions and work” specified in Rule 1(C)(5) includes “. . . gathering or delivering mail or other similar work . . . such work is covered by this Agreement.” Mail pick up and delivery work is therefore Scope covered and cannot be removed from the Clerical employees without “agreement between the parties.”

The fact that the mail work was not exclusively performed by Clerical employees does not defeat the claim. See Public Law Board 4590, Award No. 4 [a mail delivery dispute citing Third Division Award 26507, and other cited Awards] (“When both ‘positions and/or work’ are encompassed under the Scope Rule, the Organization need not prove that the work at issue has been performed exclusively by the members of its bargaining unit.”)

The Carrier’s assertions that the Clerk’s former role as a middleman was eliminated; any such work performed by exempt employees was incidental to their regular duties; and the work performed by the exempt employees is de minimis are not fully supported by the record to justify denying the claim. During the parties’ attempts to establish the operative facts on the property, the Organization asserted that since May 1993, 33 Non-Clerical employees picked up or delivered mail. The Carrier responded with a memo to various Non-Clerical employees that “. . . exempt and out-of-craft employees are allowed to pick up and deliver their own individual mail, but not for anyone else in the department” seeking statements from those individuals that they perform this work for themselves. That statement is significant because it is an acknowledgment by the Carrier that non-covered employees cannot pick up and deliver mail “for anyone else in the department.” While many responses came back indicating that mail pick up and delivery was performed by these individuals only for themselves or that different Clerical employees now perform the work, the response from Assets Protection shows that mail is handled by non-covered individuals “for our group.” That response demonstrates that the unnecessary middleman has not been eliminated and the work remains with the Clerical employees, but shows at least in that area that the work has been shifted to non-covered individuals.

Nor can we say that the amount of work is de minimis. There was a position which performed this work. That position was eliminated and the work was dispersed. Mail pick up and delivery is an essential and substantial part of most office settings. The Carrier has not demonstrated otherwise.

The Board is therefore satisfied that a violation of the Scope Rule has been shown. However, from what is before us, we are unable to sufficiently ascertain the extent of the violation to justify awarding two hours per day as sought by the Organization. The matter shall therefore be remanded to the parties to determine through a check of the Carrier's records or other mutually agreed upon procedure the amount of mail pick up and delivery work removed from the Clerical employees. Such mail work shifted to other Clerical employees or which was in the past performed by non-covered employees shall not be part of any remedy. Compensation for the lost work opportunities shall accordingly be made.

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 25th day of May, 2000.