

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34026
Docket No. CL-34265
00-3-97-3-846

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11899) that:

I. Claim of the System Committee of the TCU (ST-96-70) that:

The claim is filed on behalf of Mr. R. Binette, clerk at Rumford and Rileys, Maine. Claim is for eight (8) hours at the rate of straight time, due to the Carrier violating the Agreement by using Non-Scope employees to perform clerical work at Rumford and Rileys, Maine.

Claim commences January 2, 1996, is for each day until corrected. Carrier violated the Agreement when it used Non-Scope employees to perform the following clerical work:

Yard Checking - Non-Scope - Not in Craft and Class Bills of Lading - Non-Scope - Not in Craft and Class Preparing Switch Lists - Non-Scope - Not in Craft and Class Marking out Hazardous Form HM-100 Non-Scope - Not in Craft and Class Also files HM-100 - Non-Scope - Not in Craft and Class Also checks and lists in-bound and out-bound trains, checks cars and list them from area siding and finally checks and lists cars in Rumford and Rileys Yard.

Rules violated are, 1-1 Scope, 18-1 Days work and Overtime 18-A1 Calling Procedures, Rule 22 Forty Hour Work Week, Rule 24-1 Basis of Pay/Job Classifications, Rule 27 - Change in Duties, Rule 34 - Use of Other Than Regularly Assigned Employees, and the Stabilization Agreement of 1965 as amended in October 17, 1984.

Claim is valid and must be paid.

Claim is further made that the first level denial was not in accordance with Rule 38.

II. Claim ST-96-72

The claim is filed on behalf of Mr. R. Binette, clerk at Waterville, Maine. Claim is for eight (8) hours at the rate of straight time, due to the Carrier violating the Agreement by using Non-Scope employees to perform clerical work at Waterville, Maine.

Claim commences January 2, 1996, is for each day until corrected. Carrier violated the Agreement when it used Non-Scope employees to perform the following clerical work:

Yard Checking - Non-Scope - Not in Craft and Class Bills of Lading - Non-Scope - Not in Craft and Class Preparing Switch Lists - Non-Scope - Not in Craft and Class Marking out Hazardous Form HM-100 - Non-Scope - Not in Craft and Class Also files HM-100 - Non-Scope - Not in Craft and Class Also checks and lists in-bound and out-bound trains, checks cars and list them from area siding and finally checks and lists cars in Waterville Yard.

Rules violated are, 1-1 Scope, 18-1 Days work and Overtime 18-A1 Calling Procedures, Rule 22 Forty Hour Work Week, Rule 24-1 Basis of Pay/Job Classifications, Rule 27 - Change in Duties, Rule 34 - Use of Other Than Regularly Assigned Employees, and the Stabilization Agreement of 1965 as amended in October 17, 1984.

Claim is valid and must be paid.

Claim is further made that the first level denial was not in accordance with Rule 38."

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.

Initially, the Organization makes a technical argument that the Carrier's declinations of the claims were not proper denials. We disagree. The Carrier's denials of the claims met the requirements of Rule 38.

With respect to the merits, the governing Rule is Rule 1 Scope, particularly Rule 1.5:

"1.5 Except as otherwise provided in this Agreement, positions or work within this Rule 1 will not be removed from the application of the Rules of this Agreement except by agreement between the parties' signatory hereto."

The claims assert that strangers to the Agreement performed Clerical functions at Rumford, Rileys, and Waterville, Maine. In support of its position, the Organization submitted voluminous documentation consisting of forms and reports that it contends demonstrate that Non-Scope covered individuals performed Clerks' Scope covered work. Those Non-Scope covered individuals are Train Crews and Management.

The type of documentation submitted with the claim constitutes work falling under the Scope of the Clerical Agreement. There is no contention that the parties agreed to remove such work from the Scope of the Agreement. Therefore, under this positions or work Scope Rule, the type of work claimed is Clerks' work.

However, with respect to the Train Crews, as the matter progressed on the property the Carrier took the position that such functions were also performed by Train Crews under the Scope of their Agreement or under the concept of incidental work. The Organization never refuted that position and the evidence submitted concerning work performed by Train Crews fails to show that those individuals were not performing their own Scope covered work or work incidental thereto. With respect to the Train Crews' alleged performance of Clerks' Scope covered work, the claims will be denied.

With respect to Managers performing Clerks' work, there is ample documentation in this record that such work was indeed performed. For example, the record shows documentation of a Clerk taking a call on March 15, 1996, from Area Manager W. Rideout who was checking on some cars for a train stating that he was "playing Clerk and enjoying it." In this record there are hazardous material notices made out by Supervisors, including Rideout; train car lists made out by Rideout; and various other train lists prepared by Rideout and Trainmaster R. Coro. The record also contains a resolution between the Carrier and the UTU dated February 25, 1994 acknowledging that Area Manager Rideout "has performed de minimus amounts of contract work at Rumford . . . [and] the parties have also agreed that in the best interest of all concerned, this practice should stop." The extent of the documented performance of Clerks' work by supervision and the prior admonishment to Area Manager Rideout that he is not to perform work of other employees shows that the message that Rideout was not to perform contract covered work did not get through. The ample documentation in the record supports the Organization's position that management improperly performed Scope covered work. In that context, the Organization carried its burden to demonstrate a contract violation.

The Carrier's argument that the Organization did not sufficiently explain the dispute on the property is not persuasive. The Organization took the position that Scope covered work was being performed by strangers to the Agreement and then proceeded to document in great detail the violations — particularly those committed by Rideout and Coro. The Carrier was well put on notice — indeed, by its own documents — what the nature of the dispute was about and was given the detailed facts supporting the Organization's position.

With respect to the remedy, the Organization seeks compensation in the amount of eight hours at the straight time rate commencing January 2, 1996 and continuing. That complete request is modified because the Organization did not demonstrate that

Train Crews improperly performed Scope covered work and to award the requested relief may well include relief for allegations not proven. The function of a remedy for a demonstrated contract violation is to restore the status quo and to make whole those individuals who were adversely affected by the violation. The record shows that Scope covered work was improperly performed by members of management. The remedy shall be for the parties to ascertain how much time was involved in the performance of such work and for the Carrier to make whole the affected employees for those specific amounts of time at the appropriate straight time rate. The fact that the Claimant (or another Clerk who stood to perform the work) was working during the period covered by the claim does not preclude the awarding of affirmative monetary relief. The performance of Scope covered work by members of management took away work opportunities from the covered employees and those employees should be made whole for those lost work opportunities. The Board will retain jurisdiction over this matter in the event disputes arise concerning the extent of the monetary relief.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 34026

DOCKET NO. CL-34265

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (Springfield Terminal Railway Company

On May 25, 2000, the Board issued a partially sustaining Award in this matter. Because the parties could not agree upon the extent of the remedy, an Interpretation has been requested.

In the Award, the Board denied claims alleging that Train Crews improperly performed Clerks' work. However, the Board found in agreement with the Organization that:

“... ample documentation in the record supports the Organization's position that management improperly performed Scope covered work. In that context, the Organization carried its burden to demonstrate a contract violation.”

With respect to the remedy, the Board found:

“... the record shows that Scope covered work was improperly performed by members of management. The remedy shall be for the parties to ascertain how much time was involved in the performance of such work and for the Carrier to make whole the affected employees for those specific amounts of time at the appropriate straight time rate. The fact that the Claimant (or another Clerk who stood to perform the work) was working during the period covered by the claim does not preclude the awarding of affirmative monetary relief. The performance of Scope covered work by members of management took

away work opportunities from the covered employees and those employees should be made whole for those lost work opportunities. This Board shall retain jurisdiction over this matter in the event disputes arise concerning the extent of the monetary relief.”

In their efforts to agree upon a remedy, the parties reviewed voluminous documents, but remained at odds concerning the extent of relief required by the Award.

Upon consideration of the parties’ positions on the remedy; the difficulty in determining precisely the amount of work covered by the remedy; taking into account our discretion for the formulation of remedies; and in order “. . . to make whole the affected employees for those specific amounts of time . . .”, we find that where members of management improperly performed Clerks’ work the Carrier shall be required to compensate the affected Clerk one hour’s pay at the applicable straight time rate for each actual demonstrated violation. The parties should meet to review Carrier records to determine the applicable number of hours due the Claimants.

The Carrier also assured the Organization and the Board that the violations have stopped and that members of management are no longer performing the work which was in dispute. According to the Carrier in its Submission in this matter, “. . . we have instructed all supervisors to refrain from performing scope work” and “. . . we . . . sought the supervisors assurance that similar violations would not occur.” We accept the Carrier’s representation. However, we are mindful of the severity of the underlying demonstrated violations. See the Award where we found:

“... for example, the record shows documentation of a Clerk taking a call on March 15, 1996, from Area Manager W. Rideout who was checking on some cars for a train stating that he was ‘playing clerk and enjoying it.’ In this record there are hazardous material notices made out by Supervisors, including Rideout; train car lists made out by Rideout; and various other train lists prepared by Rideout and another Carrier official, Trainmaster R. Coro. The record also contains a resolution between the Carrier and the UTU dated February 25, 1994 acknowledging that Area Manager Rideout ‘has performed de minimus amounts of contract work at Rumford . . . [and] the parties have also agreed that in the best interest of all concerned, this practice should stop.’ The extent of the documented performance of Clerks’ work by

supervision and the prior admonishment to Area Manager Rideout that he is not to perform work of other employees shows that the message that Rideout was not to perform contract covered work did not get through. . . .”

In light of the above findings and the Carrier’s assurance to the Organization and the Board that the conduct has now ceased - an assurance which has now been given several times - similar demonstrated violations not paid by the Carrier upon the presentation of a claim will be remedied by the Board in a much more severe fashion than we have in this Interpretation.

Referee Edwin H. Benn who sat with the Board as a neutral member when Award 34026 was adopted, also participated with the Board in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 27th day of October 2004.