

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35355
Docket No. CL-33797
01-3-97-3-229**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 Transportation Communications Union (GL-11726) that:

- 1. Carrier violated the Clerks Agreement, effective December 1, 1980, when Carrier abolished Positions 102, 202, 302, Relief 1 and Guaranteed Rotating Extra Board Position No. 503, effective February 9, 1996, and gave the work that had been historically performed by the incumbents of these positions to strangers to the Working Agreement.**
- 2. Carrier shall now be required to compensate a GREB employee for eight hours at the Wage Grade 7 rate for each and every shift at the straight time rate; if none available, claim is on behalf of the Senior available Extra List Employee for eight hours pay, and if no one available claim is on behalf of the Senior Available Qualified Employee for eight hours pay at the time and one half-rate, beginning January 26, 1996, and continuing each and every day thereafter until the work is returned to the scope of the TCU Agreement."**

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.

Until February 9, 1996, the Carrier maintained one clerical employee per shift at its North Yard facility in Fort Worth, Texas. It was claimed that these clerical employees transported crews; verified cars in inbound and outbound trains; weighed cars; placarded equipment; performed roll by inspections of equipment; and read fuel levels at the mechanical department fueling facility, among other duties.

In 1993, the Carrier commenced consolidating yard and agency functions from 150 field locations into its Customer Support Center in Fort Worth. All work associated with car ordering; inbound and outbound train reporting; interchanges; switch movements and so forth at yard facilities on the Fort Worth, Amarillo and Tulsa Divisions was to be transferred to the Fort Worth Customer Support Center on or after April 29, 1993.

On February 9, 1996, the Carrier discontinued crew hauling at North Yard. Since crew hauling was the predominant function performed by Clerks at North Yard the Carrier concluded that it no longer needed any clerical positions at this facility after crew hauling was discontinued. As a result, the three regular assignments, one relief position and one Guaranteed Rotating Extra Board (GREB) position at North Yard were abolished.

On February 26, 1996, the Organization filed a claim contending that work reserved to clerical employees at Fort Worth by Rule 1 of its Agreement with the Carrier was improperly removed from these employees and assigned to non-clerical employees. This was a continuing claim for eight hours a day, seven days a week, commencing January 26, 1996 until this work was returned to the Scope of the TCU Agreement.

The Carrier denied the claim contending that after crew hauling was discontinued at North Yard there were only ancillary tasks for the clerical force to perform there. The Carrier contends that this remaining work was de minimis and, when it was required to be performed, it was assigned to other employees incidental to their regular duties which is permissible under the Scope Rule of the TCU Agreement.

The Organization's initial claim alleged that the following work was removed from the Scope of its Agreement with the Carrier:

- a) crew hauling
- b) verifying cars in all inbound and outbound trains, interchange and yard tracks
- c) weighing cars
- d) placarding equipment
- e) mechanical inspections
- f) reading fuel levels

The Organization during handling withdrew crew hauling from this claim.

The Scope Rule of the parties' Agreement provides that officers or employees not subject to the Agreement may perform any covered work which is incidental to their duties. The Carrier has convinced the Board that after the clerical positions at North Yard were eliminated the work they formerly performed was either discontinued, such as crew hauling, or was assigned to other employees incidental to their regular duties.

Evidently, clerical employees still verify cars at North Yard using video equipment at the Fort Worth Customer Support Center. Moreover, switch crews at North Yard have always checked their switch lists against the actual track inventory as part of their switching duties. This work is incidental to the switch crews' regular duties.

The Carrier maintains that clerical employees at North Yard never did a significant amount of weighing cars. Now, switch crews at North Yard weigh the cars they are handling as part of their regular duties of making up trains and switching cars and industries. Since weighing cars is incidental to the regular duties of switch

crews at North Yard it is permissible for them to perform this work under the TCU Scope Rule. This is also true of placarding equipment which is done by mechanical department employees incidental to their regular duties.

It is common knowledge in this industry that all employees perform roll by inspections of moving equipment. Thus, when officers and employees at North Yard performed roll by inspections they were not doing work reserved to clerical employees by the Scope Rule.

Lastly, it is entirely permissible for mechanical department employees to read fuel levels at the Mechanical Department fueling facility in North Yard. This negligible task is incidental to their regular duties. Therefore, they may do this work under the Scope Rule of the parties' Agreement.

For all the foregoing reasons, the instant claim must be denied.

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 20th day of March, 2001.