

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35357
Docket No. CL-33810
01-3-97-3-255**

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:

"The Organization states its claim as follows:

- 1. Carrier violated the Schedule Agreement effective December 1, 1980, at Teague, Texas, when on or about October 30, 1993, Carrier continuously utilized a non-clerical employe on a position titled Yard Coordinator (a position assigned to a member of the United Transportation Union and sometimes referred to as Utility Conductor) and assigned to that position the following duties:**
 - a) Lining up trains with their pick ups.**
 - b) Determining on what tracks trains are to set out cars.**
 - c) Giving calls of trains to the Dispatcher.**
 - d) OS'ing trains in and out of Teague, Texas.**
 - e) Tie up trains with the Dispatchers and performing other yard functions all work that prior thereto had been performed by clerical employes.**
- 2. Carrier shall now be required to compensate the first out Guaranteed Rotating Extra Board (GREB) Clerk; if none available, the Senior Available Extra List Employee, for eight (8) hours pay at the overtime rate.**

If GREB or Extra List employees were unavailable, claim is for eight (8) hours pay at the overtime rate for the Senior Available Qualified Clerk at Teague, Texas.

Claim is for October 30, 1993, and continuing on each and every day thereafter until said violation ceases and the work is returned to the craft and class of employees represented by the Transportation Communications Union.”

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.

As Third Party in Interest, the United Transportation Union / Yardmasters Department was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

At the time, five clerical employees and a number of operating craft employees were assigned to the Carrier's Teague, Texas, Yard facility 24 hours a day, seven days a week. For a number of years an operating craft employee, known as the Dodger Conductor, was assigned at Teague Yard. The Dodger Conductor was responsible for determining on what tracks trains were to be yarded, which switch moves were to be made and when they would be accomplished.

Due to an increase in business at Teague, Texas, in August 1993, the Carrier began using an operating craft employee, known as a Yard Utility Employee, to assist the Dodger crews with coordinating yard engine and train movements in Teague Yard.

The title of this operating craft position was subsequently changed to Yard Coordinator. Yard Coordinators are represented by the United Transportation Union (UTU).

Initially, Yard Coordinators were assigned to the first shift only. However, Yard Coordinators were subsequently also assigned to the second and third shifts at Teague Yard.

On December 20, 1993, the Organization filed a continuing claim beginning October 30, 1993, for eight hours' pay on behalf of clerical employees working at Teague, Texas. The Organization alleged that the newly established Yard Coordinators at Teague were performing duties that had previously been performed by clerical employees and that this was work covered by the scope of the Clerks' Agreement.

According to the Organization, the work removed from the scope of the Clerks' Agreement consisted of:

- * Lining up trains with their pickups.
- * Determining what track on which to set out.
- * Giving the calls of trains to the Dispatcher.
- * OS'ing trains in and out of Teague, Texas.
- * Tying up trains with Dispatchers.
- * Other yard functions.

On February 10, 1994, the Carrier denied the claim. The Carrier maintained that the claim was untimely since it was not presented within 60 days of August 1993 when the Yard Coordinator position was established. The Carrier also denied that Yard Coordinators were OS'ing trains or performing any other clerical functions. It asserted that operating craft employees have always communicated with Train Dispatchers regarding train movements into and out of Teague Yard. The Carrier further argues that the claim was excessive since no clerical position was abolished and no clerical employee lost any overtime.

Under the applicable Scope Rule on this property when the Organization claims that work has been removed from the Scope of the Agreement the burden rests with the Organization to demonstrate that a significant portion of work has been removed

from the Scope of the Agreement and unilaterally assigned to strangers to the Agreement. (See Award 116 of Special Board of Adjustment Appendix K, for example.) After carefully reviewing the record before us, the Board finds that the Organization has not sustained that burden.

The Organization has not convinced the Board that a significant portion of Scope covered work was taken away from clerical employees at Teague Yard and assigned to UTU-represented Yard Coordinators. It is noteworthy that after the Yard Coordinator positions were established in August 1993, no clerical positions were eliminated at Teague Yard. Moreover, there is no evidence in the record before the Board that any clerical employee was deprived of overtime or a call as a result of establishment of the Yard Coordinator positions.

The Yard Coordinators at Teague, Texas, are responsible for coordinating traffic flows into and out of the yard as well as train and switching movements in the yard. They assist the Trainmaster and Dodger Conductors who have always been responsible for the flow of traffic into and out of Teague Yard. The Yard Coordinators have simply not usurped a significant portion of work covered by the Scope of the Agreement applicable to clerical employees at Teague Yard, in the Board's opinion. Consequently, the claim must be denied without addressing the issue of whether the December 20, 1993 claim was timely filed.

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.