

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35427
Docket No. CL-34006
01-3-97-3-530**

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: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11805) that:

- (a) Claim on behalf of Ms. Beverly Myers, Clerk, Collections Department, Springfield Terminal Railway Company, for the following dates: January 2 through 5, 8 through 12, 15 through 19, 22 through 26, 29 through 31, 1996 and for each and every day until the situation below is corrected.**
- (b) Claim is for eight hours at the rate of time and one-half for each and every day listed above and for each and every day until same is corrected.**
- (c) Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collections to a non-agreement employee. The non-agreement employee is doing scope clerical work in the Collections Department each of the days listed above and continues beyond.”**

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.

On January 30, 1996, the Organization filed a claim on behalf of the Claimant, a Clerk in the Carrier's Collections Department. The claim was for eight hours' pay at the time and one-half rate for November 30, 1995; December 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28 and December 29, 1995 and continuing until corrected.

The Organization alleged that on these 20 days in December 1995, the Carrier violated Rules 1, 2, 17 and 64 of the Clerks' Agreement as well as the 1965 Stabilization Agreement, as amended. According to the Organization, the Carrier took customers who the Claimant was handling and gave the work of corresponding and collections to a non-Agreement employee. The Organization contends that the non-Agreement employee was doing Scope covered clerical work in the Collections Department on each of the 20 claim dates.

The burden rests with the Organization to establish by probative evidence precisely what work was removed from the Scope of the Agreement applicable to the Claimant and given to an employee outside the Scope of the Agreement. The Organization has failed to sustain the burden imposed on it, in this Board's opinion.

There is no evidence in the record before the Board identifying the Scope covered work that was putatively removed from the Claimant and given to a non-Agreement employee on the 20 dates of claim in December 1995. The Claimant and the Organization never identified what "corresponding and collection" work was removed from the Claimant on each of these 20 days in December 1995. Nor did either identify what customers of the Carrier the non-Agreement employee was corresponding with and for what purpose. We cannot determine how much "corresponding and collection" work was purportedly involved. Thus, we have no way of knowing if it was de minimus or substantial.

The Organization has failed to establish a factual basis for the Carrier's purported violation of the parties' Agreement in December 1995. Therefore, it has not sustained its burden of proof and the claim must be denied as a result.

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 26th day of April, 2001.

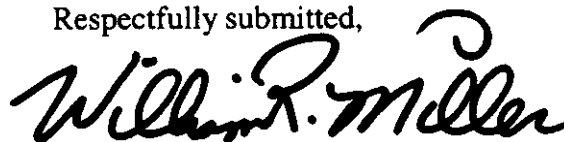
Employee Member's Dissenting Opinion
to
Third Division Award No. 35427, Docket No. CL-34006
(Referee R. M. O'Brien)

The Majority Opinion in this dispute has issued a denial Award ignoring the fact that it previously issued Third Division Award Nos. 33617 and 33906 involving the same parties, same Claimant and same Scope Rule violation at the same location wherein the Board sustained TCU's position.

As stated above the Board had before it the same parties, the same agreement rule, same violation and even the same Claimant. Review of the Award verifies that the Majority chose to pay no attention to the two precedential Awards as though they did not even exist, it does not even bother to mention them much less explain why it decided not to follow them or the principle of "stare decisis".

The Majority Opinion is an anomaly to common sense and the result of it's Award is that Carrier had violated the Scope Rule with impunity and will no doubt do so again without hesitation or fear of redress.

Respectfully submitted,

A handwritten signature in black ink that reads "William R. Miller". The signature is written in a cursive style with a large, stylized "W" and "M".

William R. Miller
TCU Labor Member, NRAB
April 26, 2000