

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35513  
Docket No. CL-33398  
01-3-96-3-797**

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:** (  
(Alton and Southern Railway

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11466) that:**

- 1. The Carrier violated Rule 1 Scope and any associated rules of the TCU Agreement when commencing August 26, 1995 it caused, required or permitted Yardmasters, Train and Engine employees, or other employees not covered by the TCU Agreement to perform duties and functions of completing switch list, making up hump lists, updating inventory (car location), generating switch lists to printers, reporting interchange and transfer information, entering delivery times, receipt times, doubling cars from bowl, receiving, industry or shop, storage and main line tracks, deleting from inventory cars delivered to off-going roads, updating and completing switch lists, entering outbound and inbound train times, and adding information to the Morning Report via the computer.**
- 2. The Carrier shall now be required to compensate the senior available employees on their rest days, and/or available extra board employees, as listed in Local Chairman’s claim, at the appropriate rate for eight (8) hours pay at the straight time rate of Console Operator, depending on availability, on a continuing basis commencing August 26, 1995 for each shift (8AM to 4PM, 4PM to 12 AM, 12AM to 8AM) of each day until claim is settled.”**

**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 and chose to file a Submission with the Board.

On August 25, 1995, the Carrier implemented a new computerized inventory control system called TCS. Under TCS, the Yardmasters enter certain data through use of a CRT which is then generated by the TCS system into reports. The reports are utilized by the Yardmasters in the performance of their duties and to give instructions to others concerning the make up and movement of trains. The Organization asserts that as a result of TCS, the Yardmasters have been assigned Clerks' duties in violation of the Scope Rule. The Carrier and the Yardmasters disagree.

Several areas of specific duties have been addressed on the property.

With respect to completing switch lists, making up hump lists and generating switch lists to printers, prior to TCS when a track was switched and ready to be humped, the Yardmasters reported the work performed to Clerks who entered the data into the computer which generated a list. After implementation of TCS, the Yardmasters enter the data directly into the computer and the lists are generated.

With respect to receipt times, doubling cars from bowl, receiving, industry, or shop, storage and main line tracks, and entering inbound train times, it appears from

the record according to the Carrier that this information is still reported by Yardmasters to Clerks as in the past, but now, Clerks make the entry into TCS.

With respect to reporting interchange and transfer information, deleting from inventory cars delivered to off-going Roads and entering outbound train times, prior to TCS, Yardmasters reported the information to a Clerk who made the data entry. After implementation of TCS, that information is reported directly into the system by Yardmasters.

With respect to updating inventory car location, prior to TCS, Yardmasters reported this information to Clerks who made the data entry. After implementation of TCS, that information is reported directly into the system by Yardmasters.

With respect to adding information to the Morning Report, prior to TCS Yardmasters prepared this report without the aid of Clerks.

**Rule 1, Scope and Classifications, provides:**

**“(a) COVERAGE:** These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming within the scope of this Agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules.

Whenever any mechanical device used for handling, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic, or vocal communications, reports or records or any combination of the same within the same or between different cities is utilized for the accomplishment of work of the character performed by employees subject to the scope of this agreement, such mechanical devices shall be operated by employees covered by said agreement.”

\* \* \*

The parties also negotiated an April 15, 1960 Memorandum of Agreement providing:

**“For the purpose of adopting the use of electronic or electrically operated data processing machines on the Alton and Southern Railroad in the performance of certain clerical work presently performed manually, the following is mutually agreed upon by the parties hereto:**

**\* \* \***

**SECTION 3**

**(a) There will be established a sufficient number of positions of machine operators, assistant machine operators, and key punch operator-clerks, subject to all the rules of the schedule agreement, to handle the work to be performed by the machine data processing system.”**

**\* \* \***

**The Board has addressed similar disputes on the property between the parties.**

**The Organization cites us to Third Division Award 26773. In that case, data entry functions given to Carmen that resulted in the generation of bills which were previously generated by Clerks was found to be an improper “transference of work.” In that case, the Board found:**

**“This is a ‘positions and work’ Scope Rule. The work of AAR car billing is in evidence and not disputed as work which was formally done by clerical employees. As such, it is their work and may be eliminated, but not continued in part or whole, directly or indirectly by others foreign to the Agreement who have not previously performed the work. There is no evidence in the record that Carmen have ever performed such work.**

**The Board must decide whether the work of the Carmen, which is as it was before the CRT, amounts to a transference of work. The record indicates that the information the Carmen used to put on paper is the same as they now put directly into the CRT. The information the Carmen used to provide the Clerks is now sent directly via computer with no intermediate step. However, sending the information generates billing. The billing was in fact the work done by the Clerks. As such, the use of the CRT is**

twofold, to report traditional Carmen's reports and to generate billing. The use of the CRT therefore is to fulfill the purpose of billing, a purpose which is established in the record as work belonging to Clerks. Carmen have been given the work of transmitting the information which generates the AAR car billing. While related to the duties of Carmen, the billing is not Carmens' duties and the purpose of their work has changed from record keeping to billing.

The Carrier may abolish positions, but the work of those positions must be eliminated, not assigned to others either directly or in the instant case by indirect means. Herein, the Agreement is explicit that work once assigned (the AAR car billing) cannot be accomplished by use of a CRT unless operated by the Clerks. There is an Agreement violation under these circumstances, wherein the CRT is being used by Carmen to input the AAR billing and accomplish work previously handled by Clerks."

The Carrier cites us to Third Division Award 32173. In that case, the Organization's claim that the entering of train information into the Carrier's computer by Yardmasters for a daily computer generated report known as a Situation Report was denied:

"The Carrier contends that as early as 1989, the General Yardmasters input all the data in question into the Situation Report by hand. It notes that the mere fact that the report was recently mechanized, so that the Yardmaster now 'writes' the data in a field on a computer screen via keystrokes instead of filling in the blanks on a sheet of paper, is not a violation of the A&S clerical Scope Rule.

As the Board noted in Award 26773, the Scope Rule in the clerical agreement on this property is a 'positions and work' Scope Rule. In that case, however, it was not disputed that the work at issue was work done by clerical employees before computerization. Rather, Carmen were given work of transmitting information which generated AAR billing, and the billing was undisputedly clerical work. By contrast, in the present case, generation of the Situation Report has traditionally been the work of Yardmasters. Moreover, evidence in the record confirms that Yardmasters previously entered by hand notations covering crew calls and

delays in the blanks provided on their work sheets, along with inbound and outbound train information.

In Award 26773, the Board stated, 'the Carrier may abolish [clerical] positions, but the work of those positions must be eliminated, not assigned to others either directly or in the instant case by indirect means.' In the instant dispute, the Organization failed to demonstrate that the work in question was work normally done by Clerks, and was subsequently assigned 'to others either directly or indirectly.'"

The Organization has not carried its burden in this matter.

First, with respect to the Organization's arguments concerning the Morning Report, as the Carrier argued on the property, that work appears to be the same work covered by the denial in Third Division Award 32173. However, if not so covered and for reasons discussed below, the work falls into the same category as discussed in that Award in that Yardmasters previously did this work by hand and Yardmasters now perform the same work through use of the CRT. No Scope Rule violation can be found for that work.

Second, with respect to receipt times, doubling cars from bowl, receiving, industry, or shop, storage and main line tracks, and entering inbound train times, from the record we cannot find that the evidence shows there has been any change in the work. From what is before us, Yardmasters continue to relay this information to a Clerk who enters the data into the TCS system. At best, there is a conflict in the assertions of the parties. However, the burden is on the Organization to demonstrate its assertion.

Third, generally and with respect to the other work claimed by the Organization which the record shows is now performed by Yardmasters through use of a CRT in the TCS System, the test articulated in Third Division Award 26773 between the parties shall be utilized in this matter - i.e., whether there was a "transference of work" and whether "the purpose of their work has changed from record keeping. . . ." Clearly, this has not been demonstrated by the Organization.

The key element underpinning the sustaining decision in Third Division Award 26773 was that as a result of being given data entry functions, the Carmen were, in

effect, issuing bills - a function they did not previously perform and which was previously performed by Clerks. In effect, in that case there was a transfer of billing functions from Clerks to Carmen. That "transference of work" is not present in this case. Here, the work claimed by the Organization is record keeping previously performed by Yardmasters on a manual basis. With the implementation of TCS, Yardmasters still perform that function. While the manner in which Yardmasters perform their work has changed (i.e., now through use of a CRT), the "purpose of their work" has not changed. Yardmasters continue to record information to keep records and generate reports which they use to make up trains - that is all. Yardmasters have not taken over functions which they previously did not perform as Carmen did with respect to billing in Third Division Award 26773.

Fourth, the Organization argues that the Clerks' prior entry of data after being supplied the information by Yardmasters which resulted in the generation of reports makes this case like the generation of a bill in Third Division Award 26773. That is not a persuasive argument under the authority decided on the property. Third Division Award 26773 specifically looked at what was generated by the data entry performed by Carmen and found that something totally unrelated to their record keeping functions was the end result - i.e., a bill which Clerks previously issued. What comes out at the end of the process here are reports directly related to the Yardmasters' record keeping functions.

In sum, for the work which is the subject of this dispute, there has been no showing of a "transference of work . . . directly or indirectly . . ." from Clerks to Yardmasters. Indeed, to sustain the Organization's position in this case would take away work from Yardmasters which they previously performed. After implementation of TCS, all that has changed is the medium used by Yardmasters to perform their work.

Based on the above, the claim must be denied.

#### **AWARD**

Claim denied.

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**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 24th day of July, 2001.**