

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37639
Docket No. CL-37326
05-3-02-3-348**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-12889)
that:

Claim No. 1 – Claim of the System Committee of the TCU (ST-97-33) that:

I am filing claim on behalf of Ms. Beverly Myers, clerk, collections department, North Billerica, Massachusetts. Claim is for the following dates: December 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, 1996. Claim is for eight (8) hours at the rate of time and one half.

Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collection to a Non-Scope employee. The Non-Scope employee is still doing scope clerical work in the collections department each of the days listed above; her name is Ms. Marie DiCiaccio.

Rules violated are: #1 Scope Rule.

Claim is valid and must be paid.

Claim No. 2 – Claim of the System Committee of the TCU (ST-97-37) that:

I am filing claim on behalf of Ms. Beverly Myers, clerk, collections department, North Billerica, Massachusetts. Claim is for the following dates: March 5, 6, 7, 11, 12, 13, 14, 17, 18, 20, 21, 24, 25, 26, 27 and 31, 1997. Claim is for eight (8) hours at the rate of time and one half.

Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collection to a Non-Scope employee. The Non-Scope employee is still doing scope clerical work in the collections department each of the days listed above; her name is Ms. Marie DiCiaccio.

Rules violated are: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and all other rules of this Agreement.

Claim is valid and must be paid.

Claim No. 3 – Claim of the System Committee of the TCU (ST-97-41) that:

I am filing claim on behalf of Ms. Beverly Myers, clerk, collections department, North Billerica, Massachusetts. Claim is for the following dates: April 7, 8, 9, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29 and 30, 1997. Claim is for eight (8) hours at the rate of time and one half.

Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collection to a Non-Scope employee. The Non-Scope employee is still doing scope clerical work in the collections department each of the days listed above; her name is Ms. Marie DiCiaccio.

Rules violated are: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 and the Stabilization Agreement of 1965 as amended on October 17, 1984.

Claim is valid and must be paid.

Claim No. 4 – Claim of the System Committee of the TCU (ST-97-47) that:

I am filing claim on behalf of Ms. Beverly Myers, clerk, collections department, North Billerica, Massachusetts. Claim is for the following dates: May 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 27, 28, 29 and 30, 1997. Claim is for eight (8) hours at the rate of time and one half.

Carrier violated the Agreement when it took customers that Ms. Myers was handling and gave the work of corresponding and collection to a Non-Scope employee. The Non-Scope employee is still doing scope clerical work in the collections department each of the days listed above; her name is Ms. Marie DiCiaccio.

Rules violated are: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9 and all other rules of this Agreement.

Claim is valid and must be paid.

Claim No. 5 – Claim of the System Committee of the TCU (ST-97-46) that:

I am filing claim on behalf of Ms. Beverly Myers, clerk, collections department, North Billerica, Massachusetts. Claim is for eight (8) hours at rate of time and one half at the rate of Transportation Service Representative (TSR) as compared to what Ms. Myers makes as an Accounting Clerk. This claim commences on January 5, 1998 and is continuous until such situation is corrected. Carrier violated the Agreement when it brought in Agency work of demurrage and miscellaneous billing, also charges for weight switching, storage, transit and diversions. This work has been brought in from Lawrence, East Deerfield, Fitchburg, Ayer, Boston, Holyoke, Rigby (Portland) and Waterville to North Billerica, Massachusetts.

Rules violated are: 24.3, 25.1, 25.2, 26.1, 27.1, 27.2, 40.1, 56.1, 56.2 and side letter #3 Stabilization Agreement of 1965 as amended on October 17, 1984, and all other rules of this Agreement.

Claim is valid and must be paid."

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.

This is certainly not a case of "first impression." There are several nearly identical claims previously handled by the Board, among them Third Division Awards 33617, 33906 and 35427. The present case most closely resembles the matter before the Board in Award 35427. Here, as in that case, the Organization failed to meet its burden of persuasion regarding exactly what scope-covered work was actually performed as alleged.

In the present case, the Organization identified an alleged non-Agreement employee who, it argues performed scope-covered work of "corresponding and collecting." Yet, the Claimant and the Organization fail to clarify anywhere on this record exactly what "corresponding and collecting" work was performed, and the exact amount of that work purportedly performed by the non-Agreement employee.

Accordingly, the Board has no basis upon which to judge whether (a) the work involved was, in fact, work covered under the Parties' Agreement and/or (b) if

such work was covered, whether the amount of work performed was de minimus or not. As the Board noted in Award 35427:

"The Claimant and the Organization never identified what 'corresponding and collection' work was removed from the Claimant on each of [the days claimed]. 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."

In light of the foregoing, the Board finds that the Organization has not met its burden of persuasion in this case. Accordingly the claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

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 19th day of October 2005.