

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37979  
Docket No. CL-38587  
06-3-04-3-567

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(BNSF Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL 13067)  
that:

1. The Carrier violated the Working Agreement when it allowed or assigned a stranger(s) to the TCU Agreement to perform procedures of mail delivery of Labor Relations mail now to be taken to Northeast Parkway which is not the Labor Relations Department located at 0.0.8.1 (sic) at Ft. Worth, Texas on the following dates of August 6, 7, 8, 9, and 10, 2001.
2. Carrier must now compensate employee Jean Laird, clerk, for eight (8) hours pay for each and everyday at straight time rate of Wage Grade 10 for August 6, 7, 8, 9, and 10, 2001, while working Position 5168 Mail Delivery Clerk.”

**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 another in a series of claims filed by the Organization alleging that Rule 1, the parties' Scope Rule, was violated as a result of the Carrier's reassignment of certain mail handling duties at the Carrier's Fort Worth, Texas, headquarters. The instant claim is dated September 18, 2001. It is the Organization's contention that the Carrier violated the Agreement on August 6, 7, 8, 9, and 10, 2001, when a contract courier delivered mail addressed to the Labor Relations Department to the Carrier facility at Northeast Parkway. The Organization asserts that, prior to the claim dates, the Claimant delivered this mail to Ms. E. Bevington, an exempt employee working in the Labor Relations Department at the Operations Office Building (OOB). The Organization contends that moving the mail delivery location of the Labor Relations Department to another site within the city, even for a limited number of days, does not remove the work from the coverage of the Agreement. If a temporary operational modification needed to be made, the Organization submits that the Carrier was required to obtain the parties' agreement in accordance with the Scope Rule, which provides:

**"RULE 1 - SCOPE**

\* \* \*

A. Work now covered by the scope of this Agreement shall not be removed except by agreement between the parties.

\* \* \*

C. Positions and work includes the following:

\* \* \*

5. Clerks ...

\* \* \*

(b) **NONCLERICAL:** Employees engaged in assorting tickets, waybills, car movement slips, etc.; operating appliances or machines for perforating and addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders and work of a like nature; gathering or delivering mail or other similar work not requiring clerical ability; office boys, messengers, chore boys, and other employees doing similar work or performing manual work not requiring clerical ability. However, such work is covered by this Agreement."

The Carrier's version of the operative facts differs from the Organization's. The Carrier contends that its Labor Relations Department is located in the OOB within the headquarters complex. Mail for the OOB is handled as common or shared work by exempt employees, outside contractors and Clerks, the Carrier maintains, and is not handled exclusively by Clerks. Usually, mail for the Labor Relations Department is delivered by courier to the OOB mail room. Occasionally, mail is delivered directly to the Labor Relations Department bypassing the mail room entirely. Upon receipt in the mail room, mail for the Labor Relations Department is delivered by a Clerk to the office of Ms. Bevington, an exempt employee. She separates the mail and places it in bins to be picked up by the individual Labor Relations Department personnel.

That portion of Labor Relations Department mail pertaining to claims and grievances is placed in a separate bin by Bevington and returned to the mail room where it is picked up and delivered by a courier from the OOB to Mr. B. Costello, an exempt employee, at the Northeast Parkway Building (NEP). The Carrier submits that mail for the NEP facility has never been delivered to or handled by Clerks.

On the claim dates, Costello was on vacation and Bevington reported to the NEP to perform her normal duties involving the handling of Labor Relations Department mail as well as a portion of Costello's duties, the Carrier avers. In other words, instead of the Labor Relations Department mail being delivered to

Bevington at the OOB, it was delivered to her at the NEP. The Carrier contends that it was not necessary for Clerks to deliver Labor Relations Department mail to her office in the OOB on the dates in question, and, because couriers have traditionally delivered mail to the NEP, Clerks had no claim to deliver the mail to that location on a temporary basis. See, Special Board of Adjustment Appendix K, Award Nos. 192 and 197.

In large part, the arguments presented by the parties in support of their respective positions on the issues of timeliness and merits have been fully addressed in Third Division Awards 37980, 37981, and 37982. We note, too, that the facts and circumstances presented in Third Division Award 37758 are similar to the instant case. There, the Organization claimed a violation of the Scope Rule when the Carrier directed an outside delivery service to stop delivering packages to its Administrative Office Building and instead directed the packages to be dropped at the Network Operations Center where various contract workers were assigned to receive, sort and distribute them. After considering the numerous arguments, many of which have also been raised in this case, the Board held:

“The Organization bears the burden of demonstrating both that the task of signing for receipt of UPS deliveries falls within the scope of ‘gathering or delivering mail or other similar work not requiring clerical ability. . .’ and that the Carrier wrongly removed a significant portion of such covered work when it ordered UPS deliveries to be made directly to the NOC to which addressed. There is nothing in this record that effectively refutes the Carrier’s detailed material assertions that at the AOB, mail has been handled as ‘shared work’ by exempt personnel, outside contract employees and TCU-represented employees ever since the facility opened in July 1999. Thus, to credit the Organization’s contentions would be subversive to the well established principal that representations not rebutted on the record by reliable proof must stand as accepted fact. In the face of the Carrier’s extensive rebuttals, the Board is unable to conclude that the Organization carried its evidentiary burden in demonstrating that the Carrier’s actions went beyond permissible limits in May 2003 when it began having UPS deliveries taken

directly to the proper address without transiting the AOL mail room. On that basis, the claim must be denied."

We agree with the logic set forth above and find it equally applicable herein. It is understandable that the Organization seeks to protect the work jurisdiction of its members under this "positions and work" Scope Rule. Moreover, it is true that covered work could die a death by a thousand cuts if the Carrier is permitted to implement even small or temporary operational changes as a subterfuge for removing work from the scope of the Agreement. But the Organization as the moving party in this contract dispute must nevertheless establish all elements of its claim. (Third Division Award 37757; "substantial impact" on the workforce as well as "deprivation or degree of hardship suffered by the Claimant" must be demonstrated). Here, it has not been proven that the Carrier transferred a significant portion of scope covered work so as to undermine the operation of Rule 1 when it rerouted the delivery of Labor Relations Department mail to Bevington at the NEP where she had been temporarily assigned. Accordingly, we must deny the claim in its entirety.

**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 25th day of October 2006.