

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39866  
Docket No. CL-40456  
09-3-NRAB-00003-080326

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood (GL-13200) that:

- (a) Carrier violated the rules of the current Clerks’ Agreement at Kansas City, Kansas on December 16, 2005, when it required or permitted employees that are not covered by the rules of the Agreement to perform routine schedule clerical work; and
- (b) The work which was removed from the scope and operation of the Agreement shall now be restored to the employees covered thereby; and
- (c) Claimant D. W. Simmons, et al, shall now be compensated for eight (8) hours at the pro rata of their abolished positions for each work day commencing December 16, 2005 and continuing until such violation ceases, in addition to any other compensation Claimant may have received for these days.”

**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.

The Claimants in this matter transcribed audio cassette recordings of formal Investigations and meetings throughout the system as part of the Kansas City Word Processing Group. On December 30, 2005, the Claimants' positions were abolished and the transcription work was sent to AccuTrans, LLC. In its denial of the claim, the Carrier noted that transcription work has been performed by various contractors throughout the system and identified ten of those contractors. The Carrier contends that the denial is proper because the Organization has not proven that the work in question (transcription) has been reserved exclusively to TCU-represented employees on a system-wide basis.

The burden of proof in this matter is on the Organization. After a careful review of the record before the Board, we do not find that the Organization presented evidence to contradict the Carrier's assertion regarding the use of outside contractors for transcriptions. Accordingly, the Organization failed to meet its burden in this matter and the claim must be denied.

**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 31st day of July 2009.