

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40826
Docket No. CL-39659
11-3-NRAB-00003-060517
(06-3-517)**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCU (GL-13155) on behalf of Claimant Guy Varcasia.

- (a) The Carrier violated the TCU/CSXT - North Rules Agreement, effective June 1, 1999, particularly Rules 1, 24, 40 and other rules, when it abolished Claimant Guy Varcasia's position, Operating Support Clerk, position No. 4B01-162, rate of pay \$137.00 per day, located at CSX's Regional Building, Selkirk, New York, effective January 17, 2005. And then assigned the duties of: car tracing (company material cars), way billing cars for Road masters, notifying Road masters on material cars, ordering empty material cars via Ships, updating Customer Service Department in Jacksonville on material car status, maintain inventory of all M of W material and equipment cars on Division, generate purchasing orders, research unpaid invoices, receipting of purchase orders, scrap rail sales - report and waybill scrap cars, maintain and distribute daily and weekly reports to Division Engineer, Material Engineer, and Signal Engineer, daily updates; basic car reporting, production tie report, rail gang report, division wreck panel report, empty gondola report, and daily phone coverage for; Division Engineer, Staff Engineers, Material engineers, and daily copying, filing and**

mail handling to a non-agreement supervisor or stranger to our collective bargaining agreement on a continual basis.

- (b) That Claimant Guy Varcasia now be allowed 8 hours pay at the pro rata rate of \$137.00 per day for each and every work day (5-days per week), commencing January 18, 2005, until this violation is corrected.
- (c) That in order to terminate this claim, said clerical work must be returned to employees covered by the TCU/CSXT - North Rules Agreement.
- (d) In order to monitor and administer the TCU/CSXT-North Clerical Agreement dated June 1, 1999, and in order to fulfill TCU's contact administrative responsibilities, I am formally requesting information relevant to the above grievance. Please provide me a detailed list of specifically which duties were found to be 'either redundant or duplicative duties that have been eliminated, and which duties have been transferred to position 4B01-163, Clerk Typist-Engineering, current incumbent M. McLaughlin.' Finally, I am requesting all CSX computer records from the period of January 18, 2005, and continuing daily thereafter, relevant to duties as outlines [sic] in paragraph (a) from the following CSX employees: Rick DelPrince (Buffalo), Ted Goodell (Dewitt), Al Amberg (Selkirk), Mike Redmond (West Springfield), Chris Lorensen (Selkirk), Ed Martuscello (Selkirk), and all Road masters within the territory formally covered by Clerical Position No. 4B01-162.
- (e) This request is made without prejudice to this claim on behalf of grievant Guy Varcasia and the union's right to information. If any part of this request is denied or if the requested material is unavailable, please provide the remaining items, which the organization will accept without prejudice to its position that it is

entitled to all documentation and information called for in this grievance.

- (f) This request is filed in concert with the TCU/CSXT-North Rules Agreement effective June 1, 1999, particularly Rule 21 (a); Section 2(5) of the Railway Labor Act; NLRB v. Acme Industrial Co., 385 U.S. 432, 64, LRRM 2069 (U.S. Sup Ct. 1967); and Steelworkers, v. Warrior & Gulf Navigation Co., 363 U.S. 574, 46 LRRM 2416 (U.S. Sup. Ct. 1960).
- (g) This claim has been presented in accordance with Rule 45 and should be allowed.”

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.

Effective January 17, 2005, the Carrier abolished Operating Support Clerk Position No. 4B01-162 held by the Claimant. The Claimant was advised of his right to exercise his seniority in accordance with the applicable Rules of the CSXT/TCU-North Agreement. The Organization asserts that the abolition of the Claimant's position violated Rules 1, 24 and 40, among others.

The tasks of the position at issue consist of car tracing (company material cars) way billing cars for Roadmasters, notifying Roadmasters on material cars, ordering

empty material cars via SHIPCSX, updating Customer Service Department in Jacksonville, Florida, on material car status, maintain inventory of all M of W material and equipment cars on the Division, generate purchasing orders, research unpaid invoices, receipting of purchase orders, scrap rail sales - report and waybill scrap cars, maintain and distribute daily and weekly reports to the Division Engineer, the Material Engineer, and the Signal Engineer, daily updates; basic car reporting, production tie report, rail gang report, Division wreck panel report, empty gondola report, and daily phone coverage for Division Engineer, Staff Engineers, Material Engineers, and daily copying, filing and mail handling.

It is the Organization's position that the duties and responsibilities of the Claimant's position were negotiated and placed within the scope of the CBA made effective June 1, 1999. Because this work was governed by a "positions and work" Scope Rule, it could not be removed from covered employees without negotiation and agreement with Organization. The "general" Scope Rule is inapplicable, the Organization asserts.

The Carrier submits that in order to prevail in this Scope Rule dispute, the Organization must prove that the alleged work is reserved exclusively to Clerical employees by specific Agreement. Where, as here, a "positions and work" Scope Rule is in effect, the burden of proof is location-specific, and the Organization must demonstrate that the work was exclusively performed by Clerical employees at the time the "positions and work" Scope Rule took effect. The Carrier contends that the Organization cannot and has not made this showing, because the disputed tasks were not exclusive to the Claimant's position or to the Clerical craft as a whole. The Carrier also asserts that most of these Clerical activities have been rendered unnecessary due to technological advances, such as E-BUSINESS, SHIPCSX, and ORACLE, that have automated many of the tasks, and the few residual tasks, such as the general office duties of receipting unpaid invoices, copying, filing and mail handling, were absorbed by Clerk-Typist Engineering Position No. 4B01-163.

It is unnecessary to determine whether this dispute should be decided under the "general" Scope Rule or the "positions and work" Scope Rule, or whether the disputed tasks are exclusively reserved to Clerks under either Scope Rule, or any other Agreement or practice at the location. Instead, the Board finds that the record clearly

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demonstrates that the work at issue has been eliminated, because it was repetitive in nature, automated through E-BUSINESS, SHIPCSX or ORACLE, or absorbed by Clerk/Typist Engineering Position No. 4B01-163. Accordingly, 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 11th day of January 2011.