

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21268
Docket Number CL-21133

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
 { Steamship Clerks, Freight Handlers,
 { Express and Station Employees
 {
 { The Atchison, Topeka and Santa Fe
 { Railway Company
 { - Coast Lines -

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7805, that:

(a) Carrier violated the rules of the current Clerks' Agreement at Richmond, California commencing on or about April 23, 1973, and continuing each day until the work of operating the teletype machines and running inquiries thereon is removed from the Quality Control Supervisor and is returned to employees under the Clerks' Agreement, and

(b) Mr. H. W. Perkins and/or the successor shall be compensated eight hours pay at time and one-half at the Head Car Clerk rate April 23, 1973, and continuing each day so long as the Quality Control Supervisor is allowed to perform this clerical work as a result of such violation of Agreement rules.

OPINION OF BOARD: This dispute involves the use of a teletype machine by a Quality Control Supervisor in an effort to trace the location of certain cars. The Claim was filed as a continuing claim, originating in an incident on April 23, 1973.

On January 2, 1970 Carrier instituted a new teletype system the ASR 35 to effect modern teleprocessing of information as part of a "Real Time Data System". All information that is added to the system, which is centered at the main computer in Topeka, Kansas, is done by clerical personnel. Carrier has operated teletype machines on its property since 1927. Carrier stated, without denial by the Organization, that supervisors and other exempt personnel had operated the new ASR 35 machines for three and one-half years, prior to the claim, in the presence of clerical employees, without complaint. The Quality Control Supervisor had made similar use of the equipment on occasion prior to April 23, 1973.

Both parties to this dispute object to new data being presented to this Board, in conjunction with the submissions, which had not been handled on the property. The positions are well taken in accordance with well established principles; accordingly, the data in question will not be considered in the resolution of this dispute.

Petitioner alleges a violation of the Agreement in that the work of transmitting and receiving car tracer messages was reserved to the telegraphers on this property by history, tradition and contractual right, and is now reserved to the Clerk's craft by virtue of the Telegraphers' and Clerks' separate scope rules being combined into a single scope rule as of the consolidation of the Agreements on November 1, 1972. It is argued further that the work of operating teletype machines on this property has been performed by either telegraphers or clerks to the exclusion of all others since 1927. In support of this last point, Petitioner relies on a series of Awards from this Board (Awards 8538, 9005, 10683 and 10776 among others). Petitioner also argues that the work of tracing cars is not directly an integral part of the Quality Control Supervisor's regular duties. Finally, it is contended that the violation herein involves a continuing claim, as contemplated by Article V, Section 2 of the 1954 Agreement.

Carrier contends that the Scope Rule on this property is general in nature and provides, furthermore, that:

"Officers or employees not covered by this Agreement shall not be permitted to perform any work or function belonging to the craft or class here represented which is not directly and immediately linked to and an integral part of their regular duties, except by agreement between the parties signatory hereto."

Carrier argues that prior to the installation of the ASR 35 teletype system, anyone could make inquiries by telephone as to the location of cars and there never was a complaint from the Clerks' Organization. The current system of using the ASR 35 teletype machine does not add any information to the computer. Carrier asserts that the use of the ASR 35, since the first day of installation in 1970, by supervisors including the Quality Control Supervisor herein, has been linked to and an integral part of their regular duties. Carrier also argues that by acquiescence for three and one-half years, the claim is not timely and should be barred. Carrier also argues that there has not been and cannot be any evidence that the use of this equipment or work has been historically, customarily and exclusively performed by the craft on a system-wide basis.

This Claim fails on one major ground. Petitioner has never established any facts to prove that the work of making inquiries via the Teletype by the Quality Control Supervisor was not an integral part of his regular duties and hence permissible under the Scope Rule Supra. Carrier has presented data affirmative to its position on this issue while Petitioner has provided nothing of substance. We have long held that assertion does not take the place of evidence. In view of this conclusion, we do not deem it necessary to deal with the other issues and arguments raised. The Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.