NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25902
THIRD DIVISION Docket Number CL-24867

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9670) that:

1. Carrier violated the effective Clerks' Agreement when, effective on or about January 26, 1981, it required and/or permitted non-employes to perform input work to its Car and Train Control System previously performed by employes at Saxonburg, Pa. fully covered by the Agreement;

2. Carrier shall now compensate the Claimants identified in Employes' Exhibit "A" and/or their successor or successors for one and one-half (1 1/2) hours' pay at the time and one-half rate of their respective positions commencing with January 26, 1981, and continuing for each and every work day thereafter that a like violation occurs."

OPINION OF BOARD: The Carrier has a customer at Saxonburg, Pa., the Saxonburg Sintering Plant, which is owned and operated by U. S. Steel. Prior to January 26, 1981 the personnel of the plant teletyped information to the Carrier relative to its loading operations. This information was then processed by the Carrier's clerks and entered into data processing equipment to generate and store this information for the Carrier's use.

On January 26, 1981, Cathode Ray Tube equipment was installed at the Sintering Plant and the U. S. Steel employees transmitted data directly to the Carrier's main computer without further processing by the Carrier's clerks. It is the Employees' contention that "outsiders" are now performing the work previously performed by those in covered employment contrary to the negotiated agreement and in violation of the Scope Rule which reserves such work exclusively to the Clerks craft. They point to a negotiated amendment to "Rule 1 -Scope" which became effective April 1, 1980, the relevant portion of which is quoted below:

"Scope"

"Rule 1 . . . (d) Positions of work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto; except that management, appointive or excepted position, or other positions not covered by this agreement may be assigned to perform any work which is incident to their regular duties.

(e) When a mechanical device is used to perform clerical work assigned to positions covered by the scope of this agreement, the operation of such device for the performance of that work will be assigned to positions covered by this agreement.

It is understood that management, appointive or excepted positions may activate mechanical devices referred to in this rule (l) for the purpose of making inquiry, securing reports or otherwise using the data stored in the mechanical device, but shall not be permitted to operate such devices for the input or storage of data currently assigned to positions covered by this agreement.

Nothing in this rule (l) shall be construed to reserve the operation of such devices exclusively to employees covered by this agreement when such devices are used to perform work of the type that is now being performed by employees not covered by this agreement." (Section 9e) is the amended portion.)

The Employees cite a series of Awards interpretive of Rule 1(d), (Nos. 19719, 21382, 21933 and Award 1 of PLB-954) to demonstrate that any and all work reserved to the craft is preserved to it unless and until it is removed by negotiation.

The Employees distinguish the Award (No. 23458), upon which the Carrier relies, by pointing out that it predated the amendment upon which they rely and which was designed to preclude an adverse finding to such as their instant claim.

They also cite PLB 1812, Award No. 53, which deals with the same issue and wherein it was found the Carrier had violated the Agreement by arranging for computer input to be handled by the employees of another Carrier.

The Carrier argues, in turn, that:

1) The work in question was not assigned to others, but rather eliminated when the Sintering Plant changed the method of transmitting information from teletype to CRT. Moreover, there is no contractual bar to technological change which would preclude the Carrier from receiving information in this manner. And doing so involved no reassignment of duties, transfer of work, diminution of the work force and no clerk suffered loss thereby.

Further the Carrier contends that the elimination of the work of converting transmitted data is analogous to the procedure of the simultaneous production of bills of lading and waybills which has been upheld by the Board in prior decisions.

2) The Carrier cites Award No. 23458 as res judicata wherein the similar use of data-processing equipment by an outside customer was challenged by the same Organization and claim made against this same Carrier. In that Award the Board held that:

> " . . . Ample authority, with which we concur, establishes the proposition that a Carrier has the right to eliminate an intermediate step in the transmission, receipt and processing of information, and where, as here, there has been such an elimination, it does not constitute a transfer of work. See Awards, 11494 (Moore); 12497 (Wolf); 13215 (Coburn); 14589 (Lynch). We find the Organization's efforts to distinguish these cases unavailing.
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> Indeed, what occurred in the instant case was no more than the normal consequence of the installation of a labor-saving technique or device. Again, ample authority supports the proposition that installation of a labor saving technique or device does not give rise to the violation of a Scope Rule. . . ."

The Carrier contends further that the revised Scope Rule issue is raised for the first time in the Employee's Ex Parte submission and therefore should not be considered. Also they hold that the claims are excessive by virtue of no loss being sustained by Clerical employees, no provision for penalty payments and duplicate claims were filed.

These latter points are moot insomuch as the Board holds that the claim is invalid.

Although the Employees rely upon the revised Scope Rule for justification of its position, the Board must hold that such a claim was not substantiated by the language of the Scope Rule either before or after its revision. The third paragraph of Rule 1(e) reads: "Nothing in this rule (1) shall be construed to reserve the operation of such devices exclusively to employees covered by this agreement when such devices are used to perform work of the type that is now being performed by employees not covered by this agreement."

This language qualifies the exclusivity claimed by the Employees and would permit others to transmit information as they have done in past, using such new technology or devices as are available to them.

Also the relevance of Award No. 23458 as res judicata is undiminished by the wording of the amended Scope Rule. To repeat, the elimination complained of here, . . . "does not constitute a transfer of work," nor does the installation of a labor saving device," . . . give rise to the violation of a Scope Rule."

Accordingly the Board will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.