

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Alton and Southern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10054) that:

1. Carrier violated the Clerks' Agreement when it assigned duties of inputting AAR car repair billing information by means of Cathode Ray Tube directly into Carrier's Central Computer System to the Craft of Carmen on or about September 24, 1984.

2. Carrier's action is in violation of Rule 1 Scope of the Clerks' Agreement.

3. Carrier shall now be required to compensate Claimants in the instant case as follows for eight (8) hours pay at the pro rata rate of \$12.0895 per hour for each date as follows:

<u>Date</u>	<u>Carrier's File</u>	<u>Claimant</u>
September 24, October 1, 15, 22 and 29, 1984	CL 1010-067-84	Larry Fetterer
September 24, 26, October 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1984	CL 1011-068-84	Richard McGee
September 27, 28, October 4, 5, 11, 12, 18, 19, 25 and 26, 1984	CL 1012-069-84	Don Case
November 5, 12, 19 and 26, 1984	CL 1013-070-84	Larry Fetterer
November 6, 7, 13, 14, 20, 21, 27 and 28, 1984	CL 1014-071-84	Richard McGee
November 1, 2, 8, 9, 15, 16, 29, and 30, 1984"	CL 1015-072-84	Don Case

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 waived right of appearance at hearing thereon.

On September 24, 1984, the Carrier instituted a New Reporting System by which Carmen would record repairs made to cars. Instead of noting the repairs made and forwarding said to an AAR Write-up Carman who completed Form 95276 except for the "net charge," the Carrier had the Carmen enter the information directly into a CRT. Prior to the use of the CRT, Form 95276 was compiled by a clerical employee who filled in the "net charge," transferred information to Form 95275 and forwarded the AAR car billing. Subsequent to the new reporting system, both Forms were eliminated and the computer automatically entered the charges, removing clerical employees from the process.

The Organization argues that the Carrier violated the Agreement when it "required employee not covered by the Agreement, namely Carmen, to perform clerical duties of inputting AAR car billing through the use of CR Tubes into Carrier's central computer system."

The Carrier denies any violation and points out that Carmen are doing the very same work that they have historically done, except that they now use "a keyboard instead of a pen or pencil." It argues that Carmen are not doing clerical work in that the work once done by Clerical employees has been eliminated.

There is no dispute on the essential facts of this case. In dispute is whether the work once performed by the Clerks has been eliminated or is now performed by Carmen in violation of the Agreement. The Board agrees with the logic in Awards holding that Clerks have no right to work that has been eliminated (Third Division Awards 22832, 23458). A thorough review of the numerous Awards cited by both parties indicates no past Awards on all fours with the instant case. The Awards cited are based on Agreements at wide variance with the one at bar. Our review of the Award of the Special Board of Adjustment cited by the Organization and Public Law Boards cited by the Carrier is that they have substantially different Agreement provisions. Public Law Board 3735 for example, involved language which allowed incidental work to be done under specific circumstances by employee not covered by the Agreement. That is not the instant case.

This Board must reach its decision on the evidence presented and controlling Agreement. The Scope Rule herein governing reads in pertinent part:

"RULE 1 - Scope and Classification

(a) COVERAGE. These rules shall govern the ... working conditions of all employees engaged in the work of the craft or class of clerical...employees. Positions or 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. (emphasis added)

Whenever any mechanical device used for handling, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic or vocal communications, reports or records or any combination of the same within the same or between different cities is utilized for the accomplishment of work of the character performed by employees subject to the scope of this agreement, such mechanical devices shall be operated by employees covered by said agreement." (emphasis added)

This is a "positions and work" Scope Rule. The work of AAR car billing is in evidence and not disputed as work which was formally done by clerical employees. As such, it is their work and may be eliminated, but not continued in part or whole, directly or indirectly by others foreign to the Agreement who have not previously performed the work. There is no evidence in the record that Carmen have ever performed such work.

The Board must decide whether the work of the Carmen, which is as it was before the CRT, amounts to a transference of work. The record indicates that the information the Carmen used to put on paper is the same as they now put directly into the CRT. The information the Carmen used to provide the Clerks is now sent directly via computer with no intermediate step. However, sending the information generates billing. The billing was in fact the work done by the Clerks. As such, the use of the CRT is twofold, to report traditional Carmen's reports and to generate billing. The use of the CRT therefore is to fulfill the purpose of billing, a purpose which is established in the record as work belonging to Clerks. Carmen have been given the work of transmitting the information which generates the AAR car billing. While related to the duties of Carmen, the billing is not Carmens' duties and the purpose of their work has changed from record keeping to billing.

The Carrier may abolish positions, but the work of those positions must be eliminated, not assigned to others either directly or in the instant case by indirect means. Herein, the Agreement is explicit that work once assigned (the AAR car billing) cannot be accomplished by use of a CRT unless operated by the Clerks. There is an Agreement violation under these circumstances, wherein the CRT is being used by Carmen to input the AAR billing and accomplish work previously handled by Clerks.

This Board holds that consistent with the Agreement on this property, the "mechanical device" is being "utilized for the accomplishment of work of the character performed by employees subject to the scope of this agreement" and therefore must be operated by clerical employees. The Board sustains Parts 1 and 2 of the Claim.

The Organization carries the burden of perfecting all elements of its Claim. In its denial, the Carrier maintained that the requested compensation was excessive. In addition, the Carrier argued that the Claimants were not eligible for a call on the Claim dates. There is neither a rebuttal, nor evidence in the record that with the Carrier's violation Claimants lost one (1) day's pay for each date claimed. The Organization has the burden of demonstrating a contractually supported penalty, or a quantifiable loss of time, money, employment, or opportunity, by which this Board can fashion an appropriate remedy. They have clearly shown the loss of an unknown amount of work and opportunity to the Clerks. Such a record is devoid of the necessary probative evidence to sustain Part 3 of the Claim as submitted. We will award Claimants compensation for any actual loss of time they may have suffered as a result of the violation.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of January 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 26773, DOCKET CL-26893
(Referee Zusman)

The Majority's analyses of the issues of liability and damages are basically correct. It is unfortunate that, in both areas, the Board did not apply existing Board precedent to such analyses. If the Majority had done so, it would have denied the claim in its entirety.

Thus, with respect to the issue of liability, the Majority correctly concludes that where work is eliminated, not transferred, no violation of a Scope Rule can result. The rationale for such conclusion, which is in accord with numerous other Awards of this Board, is that a Scope Rule violation can only come about when it is found that someone other than a member of the craft is actually performing work reserved to that craft. If no one is performing the work, no violation exists. In this dispute, as found by the Majority, no one is performing the work; instead, the billing is done automatically by computer. With respect to the work performed by the Carmen, the Majority correctly finds that the "record indicates that the information the Carmen used to put on paper is the same as they now put directly into the CRT." Moreover, regarding the operation of the CRT, while the Majority does not deal with the subject directly, it is clear from the Rebuttal Submission of the Organization that "[e]mployees have not contended an exclusive right to operate CRT's." In essence, the dispute involves a situation where Carmen are performing work they have always performed utilizing a

mechanical device which, even the Organization agrees, is one that Carmen have the right to use. The facts here present a classic example of a situation where an intermediate step in a process has been eliminated through the introduction of a labor saving device. Under such circumstances, the Board has consistently recognized that no Scope Rule violation can result. Third Division Awards: 25975, 19071, 14538, 23458, 22832, 22140, 21475. PLB 3735, Award 1 and 2; PLB 2807, Award 1; PLB 2207, Award 7.

The Majority was closer to the mark with respect to the issue of damages. It found that the Organization had the burden of perfecting all elements of its Claim, including the portion dealing with damages, and that the Organization had failed to supply any information "by which this Board can fashion an appropriate remedy." Furthermore, the Majority concluded that the "record is devoid of the necessary probative evidence to sustain Part 3 of the Claim as submitted." Having so found, the Board should have dismissed the portion of the Claim seeking monetary relief. Instead of doing so, however, the Majority directs that the Carrier compensate any of the Claimants who can now demonstrate any actual loss of earnings they may have suffered at the time the violations occurred. If, in fact, there was such actual loss of earnings, the time to prove it was in the handling of the dispute on the property.

For all the above reasons, we Dissent.

Mr Fingerhut
M. W. Fingerhut

Michael C. Lesnik
M. C. Lesnik

James E. Yost
J. E. Yost

Robert L Hicks
R. L. Hicks

P V Varga
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