

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27615  
Docket No. CL-27074  
88-3-86-3-124

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10083) that:

1. Carrier violated the Clerks' Agreement when it removed the work of reporting AAR car repair billing, CCIB inspections and FRA Rules and Regulations handling from Clerks' positions at Chicago, Illinois, and assigned these duties to the craft and class of Carmen effective on or about November 19, 1984.

2. Carrier's action is in violation of the Clerks' Agreement, expressly Rule 1 contained therein.

3. Carrier shall now be required to compensate Claimant C.L. McIntosh for eight (8) hours per day, five (5) days per week, Monday through Friday, at rate of pay of position of Mechanical clerk job rated \$106.08 per day effective November 19, 1984, until corrected."

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.

As Third Party in Interest, the Brotherhood Railway Carmen of the United States and Canada was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The instant dispute was precipitated when Carrier, in September, 1984, implemented a new computerized billing system for repairs made to freight cars. Prior to this time, Carrier utilized a three-step procedure in billing foreign railroads and private car owners for repairs made to freight cars by Carrier Carmen. First, the Carman who had repaired the car would record the car number and type of repair made on a Form 2620-4. Second,

the Carman would give the completed 2620-4 Form to another Carman identified as the "AAR Write-Up Man." This Carman would transfer the information from the 2620-4 to a two (2) carbon Form 25273. All the information on the 25273 was completed by a Carman with the exception of the column marked "Net Charge." The process was completed when the AAR Write-Up Man gave the original copy of Form 25273 to a clerical employee, who inserted the net charges on the form and then entered all the information into Carrier's Central Computer System by means of a Cathode Ray Tube.

As of September, 1984, the computer was programmed to automatically add the charges for repairs made to cars, and the computer printout of this information serves as the actual bill that is mailed to the freight car owner. Carmen in the yards still complete the Form 2620-4 when repairs are made. This form is still returned to an AAR Write-Up Man. Now, however, instead of copying the information from the Form 2620-4 onto a Form 25273, the AAR Write-Up Man enters the same information into the computer. Once the information has been copied, the computer automatically applies the charges and generates a bill.

As a result of the implementation of this new system, the Organization filed a claim alleging a violation of Rule 1 - Scope of the Agreement, effective March 1, 1973. The Organization argues that Carrier violated the Agreement when it permitted Carmen, employees not covered under the Scope of the Agreement, to report the AAR car repair billing information directly to Carrier's Central Computer System instead of turning over the Form 2620-4 to the clerk to transmit.

Carrier denies any violation of the Agreement and asserts that Carmen are doing the same work they have always done, but instead of utilizing paper and pencil, a computer terminal is used. It maintains that Carmen are not doing clerical work because the work once done by clerical employees, i.e., billing, has been eliminated.

The Board recognizes that the issue here is viewed very differently by the parties. The Organization stresses the use of the computer system to directly input car repair information into the Carrier's computerized car repair billing system. Carrier, on the other hand, characterizes the disputed work as collecting, recording and reporting car repair information on a computer screen as opposed to paper form. Both parties have cited well-reasoned precedent awards which have reached diametrically opposite results.

Review of the record demonstrates that the assignment of work conflict arose because the computer not only replaced the 25273 form, which was Carmen's work, but also rendered it unnecessary for clerical workers to compute and enter billing information, since that information was automatically provided by computer.

The record further discloses that when a Carman sits down at the computer keyboard, he keys in information identical to the data he previously would have marked on a 25273 form. The Carman obtains the car repair information from the same source, the 2620-4 form, just as he did before, and he does not fill out any information concerning billing, nor did he do so prior to the Carrier's implementation of the new billing system.

Under these circumstances, we are convinced that, in part, the new computerized system is a revised method for reporting car repair information. As such, the modification in the methodology used to accomplish a particular task does not operate to remove the work from the craft and class of employees who have performed the work in the past so long as the substance and purpose of the work is conserved. See Public Law Board No. 3031, Award No. 1.

In Public Law Board No. 3735, Award No. 1, the Board cogently set forth the reasoning which this Board deems should be applied with similar force herein:

" . . . Advances in technology which alter only the form for recording car repair information have no effect on work assignments. Each railroad craft and most importantly the clerical craft, is legitimately interested in adapting to technological innovations which change the manner of performing the work. At the same time, each craft rightly wishes to preserve its work. While the Clerks must zealously protect their work, the Scope Rule was not intended to allow clerical employees to expand their work jurisdiction at the expense of another craft. Like the Clerks, the Carmen have a vested right to keep pace with state of the art technology. To assign Clerks to operate the CRT device to report car repair data would be tantamount to vesting the Clerks with work which Carmen have historically and traditionally performed on this property. Thus, this case is governed by the substantive nature of the work rather than the instrumentality used to actually accomplish the work." (Emphasis added).

We are of the view that the foregoing discussion goes to what is really the crux of this case. When the Carman enters his car repair information into the computer, he is performing work which clearly belongs to the Carmen craft. As the record indicates, Carmen are assigned to record car repair information because they understand the nature of the repairs performed on each car at their particular shop. To sustain the position of the Organization in this dispute would amount to a de facto transfer or assignment of work that has traditionally been performed by Carmen to the Clerks' Organization.

It is true, as the Organization points out, that in recording their car repair information mechanically on the keyboard of the CRT, Carmen now perform work which was in the past performed by the Clerks. However, the core function of the Clerks' duties, which was to provide billing information, is now performed, not by the Carmen, but as an automatic function within the computer itself. In that regard, we disagree with the conclusions reached in Third Division Award 26773 wherein it is stated, "While related to the duties of Carmen, the billing is not Carmen's duties and the purpose of their work has changed from recordkeeping to billing." This Board is of the opinion that the billing work has been eliminated by the use of the computer, not transferred, and therefore no violation of a Scope Rule can result. Moreover, to the extent that Carmen now enter their car repair data into the computer rather than on paper, we find that the substance of that work, based as it is on the information

Form 1  
Page 4

Award No. 27615  
Docket No. CL-27074  
88-3-86-3-124

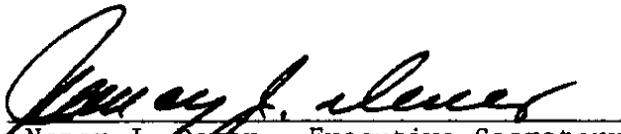
from Form 2620-4, is Carmen's work. Here, a clerical step has been eliminated, and it is well-established that no scope clause violation can result. See, Public Law Board No. 2470, Award No. 59 and Third Division Award 22832.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.

LABOR MEMBER'S DISSENT TO  
AWARD 27615, DOCKET CL-27074  
(REFEREE GOLDSTEIN)

The Majority Opinion has erred in It's decision, which is contrary to the weighted authority within the industry. Its reasoning is based upon the following:

"It is true, as the Organization points out, that in recording their car repair information mechanically on the keyboard of the CRT, Carmen now perform work which was in the past performed by the Clerks. However, the core function of the Clerks' duties, which was to provide billing information, is now performed, not by the Carmen, but as an automatic function within the computer itself. In that regard, we disagree with the conclusions reached in Third Division Award 26773, wherein it is stated, "While related to the duties of Carmen, the billing is not Carmen's duties and the purpose of their work has changed from recordkeeping to billing." This Board is of the opinion that the billing work has been eliminated by the use of the computer, not transferred, and therefore no violation of a Scope Rule can result..."

We would suggest that the Majority contradicts itself and has failed to properly consider the full record. In the first sentence it begins by stating that the Organization is correct that Carmen are now doing clerical work and then proceeds to tell us in the next breath that the work has been eliminated. Either the work was eliminated or it was transferred. It cannot be both. The Majority attempts to draw a distinction between the billing function and the entering of car repair data. In essence they assert that the Carmen enter car repair data information into the computer and then the computer automatically does the former clerical billing. The flaw in that theory is it is contrary to the record, a record which the Carrier never refuted while the case was on the property. The Organization repeatedly stated that the billing was not eliminated, but was transferred. They pointed out that

if the work had been eliminated there would be no need to assign t work by bulletin to Carmen. The Majority has simply decided to ignore Employees Exhibit No. 1 and Carrier's Exhibit "D" which was a Carriers Bulletin of January 8, 1985, for Carmen vacancy at Chicago, Il. That bulletin stated that the primary duties of the position were as follows:

**"Prepare original record of repairs for AAR billing. Input of AAR billing into computer from original record of repairs for all cars repaired"**

It is clear from aforementioned that after the abolishment of the clerical positions in dispute one of the primary functions of the Carmen position became the former clerical work. To argue differently is contrary to the record. It should be pointed out that when asked to intervene as a Third Party the Carmen declined. It is logical to assume they declined on the basis that they knew that the work in dispute belonged to the Clerks.

Award 27615 incorrectly disagrees with prior Award 26773 which ruled in a opposite manner. We believe if the Majority had paid closer attention to the record presented it would not have formulated a contrary opinion, but instead would have followed the wiser dictates of Award 25934, 26452, 26507, 26773 and 26942 to name just a few.

Award 27615 carries no precedential value and is palpably wrong.

  
William R. Miller, Labor Member

Date: December 2, 1988

CARRIER MEMBERS' RESPONSE  
TO  
LABOR MEMBER'S DISSENT  
IN  
AWARD 27615, DOCKET CL-27074  
(Referee Goldstein)

The reasoning contained in the Majority decision is so clear, and correct, that further exposition here could not improve upon it. However, inasmuch as the Organization's Dissent has quoted only a part of the paragraph of the Award setting forth the rationale of the Majority, we believe it appropriate to set forth the remaining portion. The Board stated:

"Moreover, to the extent that Carmen now enter their car repair data into the computer rather than on paper, we find the substance of that work, based as it is on the information from Form 2620-4, is Carmen's work. Here, a clerical step has been eliminated, and it is well-established that no scope clause violation can result. See Public Law Board No. 2470, Award No. 59 and Third Division Award 22832."

In addition to the two Awards cited in the portion of the Majority decision above-quoted, see, also, Third Division Awards: 25902, 25693, 23458, 22140, 21572, 21475, 19400, 19071, 14538, 13215.

The Majority Award is palpably correct.

Martin W. Fingerhut  
Robert L. Hicks  
M. C. Lesnik  
B. V. Varga  
James E. Zost