Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28269
Docket No. CL-28706
90-3-89-3-74

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10336) that:

1. Carrier violated an agreement between the parties when commencing on or about April 20, 1987, it declared abolished the positions which, in the regular performances of their assigned duties handled or performed the work of transporting crews between Wauhatchie Yard, Best Western Hotel - down town Chattanooga, Tennessee, between train and yard office and other points in that local vicinity and transferred this work to employes outside our agreement; i.e., Yellow Cab Company.

2. Carrier shall, because of the above noted violation, compensate the Senior Idle Clerk, furloughed or guaranteed extra in preference, Seniority District 14, for one day (8 hours), at the rate of $105.84 per day, rate of the allegedly abolished positions of yard clerk, or rest day rate of their assignment, whichever is greater, according to seniority and availability, on a continuous basis, commencing April 20, 1987, so long as the violations outlined above continue, a day's pay (8 hours) for each crew handled by Yellow Cab Company with a minimum of three (3) eight (8) hour days in each twenty-four (24) hour day, seven (7) days per week."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The dispute herein involves crew hauling at the Wauhatchie Yard in Chattanooga, Tennessee. On April 19 and 20, 1987, Carrier abolished three Yard Clerks positions and furloughed the incumbents. The Organization alleges that the crew hauling duties of these positions were transferred to the Yellow Cab Company, triggering the Claim herein. All other duties of the three abolished positions were transferred to the remaining clerical positions at the location.

The relevant Rules provide as follows:

"MEMORANDUM OF AGREEMENT
BETWEEN THE LOUISVILLE AND
NASHVILLE RAILROAD COMPANY
AND ITS EMPLOYEES
REPRESENTED BY
BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS

The following understanding was reached in conference on May 22, 1981, dealing with the adoption of the revised Scope Rule effective June 1, 1981.

With respect to the present performance of work by outside parties or employes of other crafts which is covered by the revised Scope Rule, the Carrier and the Organization agree that any dispute at any location where such work is presently being performed by outside parties, or employees of other crafts, the dispute will be processed under the provisions of the Louisville and Nashville Railroad Agreement effective January 1, 1973, with the understanding that the Scope Rule, as revised and effective on June 1, 1981, will not be applicable nor will it be introduced by either party during the process of such dispute.

This will not be construed as license to remove work from the coverage of the agreement on or after June 1, 1981 (effective date of the agreement) except in accordance with the rule or rules of the Louisville and Nashville Railroad Agreement. Further, it is not intended that the rule will be expanded to cover work now performed by outside parties or employees of other crafts.

This understanding shall become effective as of June 1, 1981, and remain in effect until changed in accordance with the Railway Labor Act as amended."

"RULE 1 - SCOPE RULE

(a) This agreement shall govern the hours of service and working conditions of employees engaged in the work of the craft or class of Clerical, Office, Station, Tower, Telegraph Service and Storehouse Employees, subject to exceptions noted herein.

(b) Positions within the scope of this agreement belong to employees herein covered and nothing in this agreement shall be construed to permit the removal of such positions from the application of these rules, except as provided in Rule 66.

* * *

(d) This agreement does not apply to employees engaged in classes of service which are properly to be included in agreements reached with other organizations; or to those in the Police Department; or to those in service on any docks or wharves covered by other agreements; or to those paid $75.00 per month or less for limited or special service which requires only a portion of their working time; or others performing personal service which the railroad is not obligated to provide."

"RULE 13 - REDUCING FORCES
(Effective November 1, 1982

* * *

(b) When abolishing positions, except as provided in paragraph (c), the lowest rated position in the office or department shall be abolished, provided the efficiency of that office or department would not be impaired by doing so. The remaining duties of the abolished position will be assigned to employees subject to this agreement and in accordance with Rule 29. When the duties of a position are no longer performed in any manner, that position may be abolished." (Emphasis added)

The Memorandum of Agreement of May 22, 1981, and its application, was confirmed by a letter dated May 29, 1981, from the former Director of Labor Relations (of the L&N Railroad) to Division Superintendents, which provided:

"* * *

Agreement was executed with representatives of the BRAC Organization on May 22, 1981 disposing of part of the issues involved in the Organization's attached, and you will note it is effective June 1, 1981.

We suggest that the following items be noted carefully:

RULE 1 - SCOPE

This rule is amended with a revised paragraph (b) to provide that positions or work now under coverage of the Scope Rule will not be removed therefrom except by agreement. This does not mean that we may not abolish unneeded positions; however, any work remaining from an abolished position must be reassigned to another contract position.

The amendment should be reviewed in light of the Memorandum of Agreement dated May 22, 1981 attached to the main agreement. This agreement interprets the new amendment and provides that work will not be removed from contract positions now performing such work. Similarly, it provides that the new amendment will not be expanded to covered work now performed by other crafts or outside parties. For example, we have other employees transporting crews, transporting mail, performing janitorial work, using IBM equipment, etc. This may be continued as well as work now being performed by outside contractors such as taxi companies and bus companies which transport crews and mail.

We strongly urge, in order to avoid disputes with BRAC in the future, that a written record be established as of May 22, 1981 covering any unusual situation involving work which might be considered as falling under the BRAC Scope Rule which is and has been performed in the past by outside parties, other employees and supervisors. Please furnish copy to this office to be kept with the agreement for future reference.

* * *"

The Submissions of both parties to this dispute, while replete with arguments, are deficient from a factual standpoint in a number of important respects. While both parties agree that the Clerks did not historically have exclusive rights to crew hauling, neither Submission indicates precisely how much of that work was normally done by the Yard Clerks and how much (previously) by the Yellow Cab Company. In addition, Carrier alludes to the fact that the remaining work of the Yard Clerks was redistributed to the remaining clerical positions, but has made no statement and presented no facts with respect to the crew hauling work remaining. The Organization's position that the residual crew hauling work was reassigned to the Yellow Cab Company must be credited.

The Organization's position is that it was entitled to perform the same percentage of the crew hauling activity as it did at the inception of the amended Scope Rule (while agreeing that it did not have the exclusive right to haul all crews). The critical date was June 1, 1981. Since no records were available for the work performed on or about that date, the Organization claims that the date to measure the amount of work performed by the Clerks and the Cab Company should be April 6, 1987. The Organization notes that in March 1987, Yellow Cab Company had 73 trips for a cost of $584. In June of 1987, there were 828 trips for a total amount due to Yellow Cab of $6,802.80. This constituted a 1000% increase in the Yellow Cab crew hauling activity coincident with the abolishment of the three positions. The Organization argues that the June 1, 1981, amended Scope Rule as well as the special understanding of May 22, 1981, denied Carrier the right to remove work from clerical positions which had previously been performed by Clerks. The Organization asks only that the quantum of work being performed by Clerks be preserved by the freeze frame provisions of the amended Scope Rule. The Organization relies on a host of Awards dealing with related problems, including Award 66 of Public Law Board 1605 at the same location.

Carrier takes the position that the Claim must be progressed under the provisions of the January 1, 1973 Scope Rule. Under that general type of Scope Rule the Organization, to prevail, must prove that the work in question is exclusively the work of Clerks under the Agreement. Carrier insists that the facts clearly indicate that there could not have been "exclusivity" with respect to the crew hauling activity. Additionally, Carrier argues that there was no "freeze frame" rule entitling the Organization to any portion of the work which was not exclusively its on June 1, 1981. Carrier also maintains that Awards 10 and 55 of Public Law Board 2807 are controlling in this dispute. Further, Carrier states that in any event the Claims herein are excessive and punitive in nature.

Carrier's reliance on Awards 10 and 55 of Public Law Board 2807 is misplaced; those Awards dealt with circumstances prior to the May 22, 1981 Agreement. It is the Board's view that under the terms of the May 22, 1981 Memorandum of Agreement no work could be removed from the Scope of the Agreement. That language was interpreted by the former Labor Relations Director to mean that work remaining from an abolished position must be reassigned to another contract position. That is precisely what should have taken place here, when the crew hauling activity remained after the Yard Clerks' positions were abolished. That assignment would clearly not grant any new work to the Clerks, nor would it assume "exclusivity."

Under all the circumstances, and after a thorough review of the arguments and authorities cited by the parties, it is concluded that Carrier acted improperly in assigning the crew hauling work which had previously been performed by the Yard Clerks to the Yellow Cab Company rather than to the remaining clerical positions at the location. However, the record is far from satisfactory with respect to any measurement of the amount of work involved; Carrier is correct in characterizing the Claim as excessive, but remiss in failing to provide any pertinent information. Based on the state of the record, the Board believes that two hours per shift (pro rata) would be a reasonable measure of the losses sustained by the Clerks, until the work is returned to the clerical forces in accordance with Rule 13(b) or the parties have reached some other accommodation.

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 28th day of February 1990.

CARRIER MEMBERS' DISSENT
TO
AWARD 28269, DOCKET CL-28706
(Referee Lieberman)

Our dissent is required because the Award is replete with errors in fact and fails to conform to well-reasoned and long-standing precedential Awards which resolved similar disputes between the parties.

The decision in this case turns on interpretation of the May 22, 1981 Memorandum Agreement pertaining to application of the "specific type" Scope Rule which became effective June 1, 1981.

Prior to June 1, 1981, the Agreement between the parties contained a "general type" Scope Rule. The parties agreed to a "specific type" Scope Rule which became effective June 1, 1981. At the same time, the parties entered into the May 22, 1981 Memorandum Agreement which provided in pertinent part:

> "With respect to the present performance of work by outside parties or employees of other crafts which is covered by the revised Scope Rule, the Carrier and the Organization agree that any dispute at any location where such work is presently being performed by outside parties, or employees of other crafts, the dispute will be processed under the provisions of the Louisville and Nashville Railroad Agreement effective January 1, 1973, with the understanding that the Scope Rule, as revised and effective on June 1, 1981, will not be applicable nor will it be introduced by either party during the process of such dispute."

In Award 10 of Public Law Board 2807 (which resulted from a similar claim filed at Chattanooga, Tennessee in May, 1980) the Board held that:

> "...On the contrary, there is ample evidence showing that the duties of transporting train crews and messages have been performed by different classes of Carrier employees, as well as cab drivers, over the years. These duties have clearly not been exclusive to the Clerical Craft."

Therefore, in light of the above, there can be no doubt that the work of hauling crews at Chattanooga had been performed by "...outside parties, or employees of other crafts..." as specifically contemplated in the May 22, 1981 Agreement at the time it was negotiated.

Effective November 15, 1982, (i.e., subsequent to the May 22, 1981 Memorandum Agreement) the Carrier abolished a Storekeeper's position at DeCoursey, Kentucky. As a result, the

Organization filed a claim alleging that the remaining work of the abolished position had not been distributed in accordance with the Agreement. The Organization alleged a violation of the new "specific type" Scope Rule and Rule 13 - REDUCING FORCES of the General Agreement, exactly as it did in the instant claim.

Award 55 of Public Law Board 2807 held in pertinent part:

> "The crux of this dispute concerns the proper application of the Scope Rule. Were we to follow the Rule (1981) cited by the Organization, we would conclude that the Claim has merit. However, a review of the Agreement indicates that the controlling provision is under the 1973 Agreement. Addendum 1-B, cited earlier indicates that 'the dispute will be processed under the provisions of the...Agreement effective January 1, 1973, with the understanding that the Scope Rule, as revised and effective on June 1, 1981 will not be applicable....'"
>
> * * *
>
> "The 1973 Rule does not specify any duties that are reserved for any particular group of employees. Therefore, unless the Organization establishes that the Carrier had a system-wide practice of exclusively assigning the duties in question to certain groups, it cannot meet its requisite burden. The Organization must show that the Claimant's employee group was exclusively entitled to perform the duties created by the abolishment. The Organization has failed to meet that burden."

The above claim, analogous in every respect to the instant claim, was denied following well-reasoned logic and precedential precepts which have been upheld for many years.

In Award 28269, the Majority stated that "Carrier's reliance on Awards 10 and 55 of Public Law Board 2807 is misplaced; those Awards dealt with circumstances prior to the May 22, 1981 Agreement." As noted hereinbefore, Award 55 dealt with a claim that resulted from a position being abolished on November 15, 1982, approximately sixteen months after the May 22, 1981 Memorandum Agreement was signed. Also, since Award 55 quoted from the May 22, 1981 Agreement, one must wonder if the Majority carefully read the Award, particularly in light of the statement to the effect that Award 55 dealt with circumstances prior to the May 22, 1981 Agreement.

The Majority further erred when it concluded that the Carrier alluded to the fact that the remaining work of the Yard Clerks was redistributed to the remaining Clerks, but made no statement and presented no facts with respect to the crew hauling work remaining. In fact, Trainmaster-TSC C. C. Bryant stated in his May 7, 1987 declination of the instant claim:

> "Crews have been transported in the past and are still being hauled by clerical employees, Yellow Cab Company, Contract Bus Service..."

Therefore, it is evident that the Carrier did make a statement with respect to the remaining crew hauling work being performed by clerical employees, as well as others. The Organization never refuted this statement on the property. We concede the Carrier did not present any facts concerning the amount of crew hauling work remaining, or how much was being performed by whom. Such omission, however, should not have been fatal to the Carrier's position since it is our understanding that the burden of proof was upon the Organization. Apparently the Majority does not hold with that long-established and well-documented tenet of this Board.

In effect, the Majority suggests that the Scope Rule, effective June 1, 1981, was a "freeze frame" agreement, and the May 22, 1981 Agreement provided that no work being performed by a Clerk on June 1, 1981 could be removed from the scope of the Agreement. The Majority further indicates that all work remaining from an abolished clerical position must be reassigned to another contract clerical position. If the parties so intended, it would not have been necessary for the parties to enter into the May 22, 1981 Memorandum Agreement providing that claims of this nature would be processed under the provisions of the January 1, 1973 "general type" Scope Rule.

The Majority stated that "...the record is far from satisfactory with respect to any measurement of the amount of work involved," but then reached into thin air and pulled out the figure of two hours per shift as a reasonable measure of the losses sustained by the Clerks. In this record, there is absolutely no proof of the amount of work allegedly transferred to the Yellow Cab Company.

It is apparent, after a careful review of the Award, that the Majority felt that the Organization should have some relief in this claim and then completely disregarded several long-established tenets of this Board and sustained the claim without the facts or logical reasoning to support the decision. The Majority disregarded this Board's precedential precepts relating to burden of proof and contract construction as well as

the relation between special and general rules. Therefore, this Award is palpably erroneous and cannot be accepted as dispositive of the issue at bar.

For the foregoing reasons, we dissent.

Michael C. Lesnik
M. C. LESNIK

Martin W. Fingerhut
M. W. FINGERHUT

Robert L. Hicks
R. L. HICKS

P. V. Varga
P. V. VARGA

James E. Yost
J. E. YOST

LABOR MEMBER'S RESPONSE

TO

CARRIER MEMBER'S DISSENT

OF

AWARD 28269, DOCKET CL-28706

(REFEREE LIEBERMAN)

A response to the Minority Opinion is necessary in this instance because of the error of its way. It begins by stating:

> **"Our dissent is required because the Award is replete with errors in fact and fails to conform to well-reasoned and long-standing precedential Awards which resolved similar disputes between the parties."**

The Minority first suggests that the Majority erred in its factual recounting of the case yet when that allegation is examined under the scrutiny of the actual record developed on the property and presented before the Board it is clear that there is no substance to that propositi To further suggest that the Award fails to conform to well-reasoned and long standing precedential Awards on the property is absolute nonsense.

The Minority states that Awards 10 and 55 of Public Law Board 2807 are precedential in the case at bar. That conception of those Awards is misplaced. Award No. 10 is not on point with the instant dispute as it involved the hauling of crews on National Holidays whereas the present dispute involves the abolishment of positions and transfer of crew hauling duties to the Yellow Cab Company. The Organization never argued that Yellow Cab Company didn't do some of the work rather it stated that it was entitled to perform the same percentage of the crew hauling activity as it did at the inception of the amended Scope

Rule. Clearly Award No. 10 is not on target.

The next Award that Minority suggests is precedential is Award No. 55 which dealt with a dispute not involving crew hauling prior to the updating of the Scope Rule and did not concern itself with the Interpretation made by the Director of Labor Relations on May 29. 1981, of the new updated Scope Rule wherein he explained the aforementioned rule as follows:

> "Rule 1 - Scope
> This rule is amended with a revised paragraph (b) to provide that positions or work now under coverage of the Scope Rule will not be removed therefrom except by agreement. This does not mean that we may not abolish positions; however, any work remaining from an abolished position must be reassigned to another contract position."

He then went on to state:

> "The amendment should be reviewed in light of the Memorandum of Agreement dated May 22, 1981, attached to the main agreement. This agreement interprets the new amendment and provides that work will not be removed from contract positions now performing such work..." (Underlining our emphasis) (T.C.U. Exhibit No. 16 page

Some two years later on April 28, 1983, (T.C.U. Exhibit No. 14 page 5) the Superintendent Mr. I. L. Bell wrote the Executive Vice President of Operations the following after being approached about using an outside van service to haul crews in the Chattanooga-Wauhatchie area.

> "...They are aware of the present contract restrictions which prevents use of anything other than Seaboard personnel and vans for the hauling of crews except under unique circumstances. This restriction to the use of Company personnel and vehicles applies to the immediate Chattanooga-Wauhatchie area." (Underlining our emphasis.)

It is clear from the above that Labor Relations as far back as 1981 and officers in the field in 1983 were interpreting the Scope Rule in dispute in the same fashion as the Majority has interpreted it in this instance. If Award No. 55 had the same advantage of the

record set forth in this case it is evident that it's conclusion would have been different.

We would also point out that Referee Blackwell sustained the Organizations position over a similar crew hauling dispute at the same location in Public Law Board No. 1605 Award No. 66 on July 12, 1979, before the Scope Rule was updated. Thus the Organization's position has been sustained under both the General Scope Rule concept as well as the updated "freeze frame" concept of a "position and work" Scope Rule.

Based upon the record presented on the property the Majority was absolutly correct when it stated:

> **"...It is the Board's view that under the terms of the May 22, 1981 Memorandum of Agreement no work could be removed from the Scope of the Agreement. That language was interpreted by the former Labor Relations Director to mean that work remaing from an abolished position must be reassigned to another contract position. That is precisely what should have taken place here, when the crew hauling activity remained after the Yard Clerks' positions were abolished..."**

It is evident that there is no other reasonable conclusion to be made. The Minority Opinion however, is not reasonable or logical since it rejects the Interpretation of the Scope Rule made by the Carrier itself. The Majority correctly concluded when the Carrier made the same outlandish argument before the Board that it is a contradiction in logic and facts. The Minority is to be congratulated for its persistence in defending the indefensible.

Last, but not least the Dissent takes exception to the relief provided. The compensation awarded was based upon a reasonable measure of the losses sustained by the Clerks when the work was illegally removed from under their coverage. This Board has repeatedly stated that even in situations where there has been no loss of compensation it has a

responsibility to uphold the integrity of the Agreement through compensation otherwise it is an invitation to the Carrier to violate the Agreement.

The Carrier Member's Dissent which smacks of sour grapes does not detract from the soundness of Award No. 28269 which follows precedential Third Division Awards 25934, 26507, 27623, Public Law Board 4070 Award 16, 17, 19, 20, 21 and 22, and Public Law Board 2189 Award 8 to name just a few. The Award is correct and should be followed by the parties in the future as it settles the issue.

Respectfully Submitted

William R. Miller

William R. Miller
Labor Member N.R.A.B.

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S RESPONSE
TO
CARRIER MEMBERS' DISSENT
TO
AWARD 28269, DOCKET CL-28706
(Referee Lieberman)

The Labor Member's Response to our Dissent consists of three and one-half pages of tripe designed to support an obviously erroneous Award.

The Labor Member still refuses to admit the Award was factually inaccurate when it stated that "Carrier's reliance on Awards 10 and 55 of Public Law Board 2807 is misplaced, those Awards dealt with circumstances prior to the May 22, 1981 Agreement." A careful review of Award 55 reveals that it resulted from a position being abolished on November 15, 1982, approximately sixteen months after the May 22, 1981 Memorandum Agreement was signed. This fact cannot be explained away.

Next, the Labor Member attempts to rely on a partial quote from a May 29, 1981 letter written by former Director Labor Relations J. M. Sale to support this Award. However, a careful reading of the entire letter does not support the Labor Member's statement "that Labor Relations as far back as...(was) interpreting the Scope Rule in dispute in the same fashion as the Majority has interpreted it in this instance." If Mr. Sale had intended the revised Scope Rule to be a "freeze frame" Rule, it would not have been necessary for the parties to enter into the May 22, 1981 Memorandum Agreement.

The Labor Member also relied on an April 28, 1983 letter written by former Superintendent I. L. Bell to support the erroneous conclusion that the Carrier interpreted this Scope Rule dispute in the same fashion as interpreted in this dispute. It is difficult to believe that the Labor Member is not aware of the substantial body of precedent by this Board holding that the right to interpret agreements for the Carrier is retained by the highest designated officer, in this case the Director of Labor Relations. Again, it is readily apparent that the Labor Member is clutching at straws in an effort to support an erroneous Award.

The Labor Member also refers to Referee Blackwell's Award No. 66 of Public Law Board No. 1605 as supporting the conclusion since it was rendered under the former "general" type Scope Rule. However, he failed to mention Referee Zumas' Award 11 of Public Law Board 2807, subsequently rendered under the same "general" type Scope Rule and involving crew hauling at the same location, which stated in pertinent part:

> "This Board has carefully examined Award No. 66, Case 119 and Award 36, Case No. 63, both of Public Law Board No. 1605. The reasoning in those cases is not persuasive, and need not be followed. The issue in this dispute has been addressed in this Board's Award No. 10, resulting in a denial award."

The Labor Member's Response also refers to Third Division Awards 25934, 26507, and 27623, PLB 4070 Awards 16, 17, 19, 20, 21 and 22, and PLB 2189 Award 8 as being soundly precedential in support of Award 28269. A careful reading of these Awards

reveals that all were progressed under the "position or work" type Scope Rules, and cannot be considered precedential in light of the May 22, 1981 Memorandum Agreement which provided that claims of the type which resulted in this Award must be progressed under the "general" type Scope Rule.

It is interesting to note that Third Division Award 25934 (Vaughn) involved a dispute between BRAC and the Norfolk and Western Railway Company. Effective January 12, 1979 these parties amended their Scope Rule to a "position or work" type Rule. In this Award, the Board held in part:

> "The Board does not decide that the 1979 amendment to the Scope Rule froze all work, including work not specifically identified and described by Agreement of the parties as being covered: suffice that it froze the work specifically identified by the Micromation Memorandum."

This Award supports the Minority position in this case.

Lastly, the Labor Member's Response stated "The compensation awarded was based upon a reasonable measure of the losses sustained by the Clerks when the work was illegally removed from under their coverage." In this regard the Majority stated in Award 28269 "the record is far from satisfactory with respect to any measurement of the amount of work involved; Carrier is correct in characterizing the claim as excessive, but remiss in failing to provide any pertinent information."

There was absolutely no proof of the amount of work allegedly transferred to the Yellow Cab Company. As we have previously stated, the Carrier did not present any facts concerning the amount of crew hauling work which was being

performed and by whom it was being performed because such information did not exist. Therefore, there was no way the Majority could have awarded compensation "based upon a reasonable measure of the losses sustained by the Clerks", as the Labor Member has stated.

In summary, this Award turned on the interpretation of the May 22, 1981 Memorandum Agreement pertaining to the application of the revised June 1, 1981 Scope Rule. The Majority failed to consider Awards 10 and 55 of PLB No. 2807 because they erroneously felt those Awards dealt with circumstances prior to the May 22, 1981 Memorandum Agreement. They then compounded their error by disregarding the Board's precedential precepts relating to burden of proof, contract construction and the relation between special and general rules.

It is apparent that the Labor Member is struggling long and hard in an effort to overcome the numerous errors contained in Award 28269. However, it is also readily apparent that he has failed miserably in his efforts. Therefore, we reaffirm this Award is palpably erroneous and do not accept it as dispositive of the issue.

Michael C. Lesnik
M. C. LESNIK

Martin W. Fingerhut
M. W. FINGERHUT

Robert L. Hicks
R. L. HICKS

P. V. Varga
P. V. VARGA

J. E. Yost (jw)
J. E. YOST