

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10235) that:

1. The company violated the Rules Agreement effective March 1, 1973, as amended, when they arbitrarily abolished Diesel Clerk positions and instructed and permitted the Foreman and General Foreman 'to absorb the duties of the abolished positions.'

2. The company shall now be required to compensate Clerk Edna M. Hawkins six (6) hours pay each day at the pro rata rate of pay of the Diesel Clerk position commencing October 15, 1986, and continuing each and every day until settled."

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 waived right of appearance at hearing thereon.

As Third Party in Interest, the American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

In October, 1986, Carrier abolished the second and third shift Diesel Clerk positions at the Kansas City Locomotive Maintenance and Repair Facility. As a result of said abolishment, the Organization filed a Claim on behalf of Claimant herein, contending that the work of the abolished positions was being performed by the Engine Foremen. Specifically, the Organization asserted that Carrier violated Rule 1 (Scope Rule), since the work performed by the Engine Foremen was previously performed by the Diesel Clerks. It submitted documentary evidence, particularly, a signed letter from an Engine Foreman who attested that he performed such work, and also that said work was performed an average of two hours per shift by Diesel Foremen.

In response, the Carrier asserted that the Engine Foreman's statement merely identified the work being performed, but observed that the Organization never substantively established that said work accrued exclusively to the Clerk's craft. At best, it contended that the work was incidental to the work of Engine Foremen. Furthermore, it maintained that a careful analysis of the actual work delineated in the Engine Foreman's letter, shows that the identified work was either incidental to the Engine Foreman's duties or incidental to the locomotive repair operation. In other words, the disputed work was minimal and incidental to the Engine Foreman's primary duties. It also argued that entering information directly into a CRT (Cathode Ray Tube) was not protected work, and noted in this connection, that instead of using paper and pen to relay the information from Form 2549 into the TCS, the Engine Foreman now used the CRT.

In considering this case, we find sufficient evidence to conclude that part of the work performed by the Engine Foremen accrued to the Clerk's craft, but the precise dimensions of such work is difficult to determine from this record. To be sure, one could plausibly contend that prior to the abolishment of the second and third shift Diesel Clerk positions, the Engine Foremen at the Kansas City Locomotive Maintenance and Repair Facility did not perform this work, but one could not further conclude that a portion of the clerical duties were not de facto incidental to the work of the Foremen. In fact, there are no Agreement provisions that preclude Engine Foremen from using the CRT. Accordingly, in view of the incompleteness of this record, particularly as it relates to the actual time spent on assorted specific clerical duties, we must, of necessity, conclude that the work performed was limited in nature. Thus, the Scope Rule was technically violated. We will not award a monetary remedy, since establishing the exact dimensions and duration of the work involved is beyond measurable calculation, but we will direct the parties to review the Engine Foremen's duties to determine what work normatively and incidentally accrues to that position. Work that accrues to the Clerks must be assigned to that craft or penalties will be justified.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.