

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
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10184) that:

Case No. 1

(a) Carrier violated the provisions of the current Clerks' Agreement at San Diego, California on June 23, 1986, when it required and/or permitted an employe that is not covered by the Agreement to perform routine schedule clerical work, and

(b) C. A. Pickens shall now be compensated for four (4) hours' pay for June 23, 1986, at the time and one-half rate of Head Claim Clerk Position No. 6214, in addition to any compensation Claimant Pickens may have received for this day.

Case No. 2

(a) Carrier violated the provisions of the current Clerks' Agreement at San Diego, California on June 26, 1986, when it required and/or permitted an employe that is not covered by the Agreement to perform routine schedule clerical work, and

(b) C. A. Pickens shall now be compensated for four (4) hours' pay for June 26, 1986, at the time and one-half rate of Head Claim Clerk Position No. 6214, in addition to any compensation Claimant Pickens may have received for this day.

Case No. 3

(a) Carrier violated the provisions of the current Clerks' Agreement at San Diego, California on July 3, 1986, when it required and/or permitted an employe that is not covered by the Agreement to perform routine schedule clerical work, and

(b) C. A. Pickens shall now be compensated for four (4) hours' pay for July 3, 1986, at the time and one-half rate of Head Claim Clerk Position No. 6214, in addition to any compensation Claimant Pickens may have received for this day.

Case No. 4

(a) Carrier violated the provisions of the current Clerk's Agreement at San Diego, California on August 12, 1986, when it required and/or permitted an employee that is not covered by the Agreement to perform routine schedule clerical work, and

(b) C. A. Pickens shall now be compensated for four (4) hours' pay for August 12, 1986, at the time and one-half rate of Head Claim Clerk Position No. 6214, in addition to any compensation Claimant Pickens may have received for this day.

Claim No. 5

(a) Carrier violated the provisions of the current Clerks' Agreement at San Diego, California on August 27, 1986, when it required and/or permitted an employee that is not covered by the Agreement to perform routine schedule clerical work, and

(b) C. A. Pickens shall now be compensated for three (3) hours' (a call payment) for August 27, 1986, at the rate of Head Claim Clerk Position No. 6214, in addition to any compensation Claimant Pickens may have received for this day."

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 employees 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.

This dispute centers on whether Carrier violated the Agreement, particularly Rules 1 (Scope Rule) and 2 (Grades of Work) when a Supervisor inspected damaged freight on six (6) specific occasions. The Organization charged that said assignments usurped the work of clerical employees, since inspection of damage to lading and/or inspection of the condition of lading was always performed by covered employee. Moreover, it asserted that the reports filed by the Supervisor were identical to and developed for the same basic purpose as the data required in preparing the Uniform Exception Report. It also maintained that notwithstanding the Carrier's exclusivity theory, the Carrier was prohibited from removing positions or work from the application of the Rules of the Agreement.

In response, the Carrier contended that said work was not bargaining unit work, but instead new work never before performed by clerical employees. In essence, the work was integral to the new Distressed Load Program that was initiated on October 1, 1984. Accordingly, since the Quality Control Department required a more sophisticated level of analysis and since the decisions of the Quality Control Field Supervisor affected the allocation of company resources, the work performed by the Supervisor was distinguishable from traditional clerical work. Further, Carrier asserted that the Supervisor did not prepare a Claims Inspection Report and also observed that R.F.O. Managers and exempt Perishable Traffic Inspectors have routinely made claims inspections on the property.


In considering this case, the Board concurs with Carrier's position. Firstly, we have no hard evidence that the work performed was traditionally performed by Clerks and no evidence that it was subsumed under the operational duties of the Quality Control Field Supervisors. To be sure, there is an apparent overlap in functional duties, but there is no specific evidence that the Supervisor prepared a Uniform Exception Report or performed palpably definable clerical work. Secondly, the disputed work appears to fall within the parameters of the Distressed Load Program and thus represented distinguishable work. We agree with the Organization that Carrier is precluded from removing work from the coverage of the Agreement, but the record does not compel us to conclude that the work herein was clearly protected work. On the other hand, Carrier conceded that Clerks were responsible for preparing the Uniform Exception Report and, accordingly, it might behoove the parties to clarify the areas and delimitations of work assignments. Upon the record, we find no evidence of Agreement violation and, as such, the Claim as presented is denied. In closing, we hasten to point out that both sides added new material to their Submissions that was contrary to the Board's Rules. If the parties had exchanged and considered such materials on the property, the dispute might have been resolved by them.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.