

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10155) that:

1. Carrier violated the Agreement between the parties when on February 19, 1986, Carrier caused, required or permitted an employee not of the clerical craft and class to perform work performed by employees covered by the effective Agreement when the Section Foreman John Olson recalled furloughed Section Laborers William Lassi and Ronald Kubis to return to work for snow removal.

2. Carrier shall, as a result of such violative action, compensate Chief Clerk, Track Department, John Walczynski two (2) hours pay at the time and one-half rate of pay as a result of the above-mentioned violation of the Agreement."

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.

The on-property handling shows that Claimant is the Chief Clerk in the Carrier's Track Department. On February 19, 1986, at 5:00 A.M., the Section Foreman called furloughed Section Laborers to return to work for snow removal duties. Claimant states that he has worked in the Roadmaster's office for 35 years and that although Section Foremen and other Supervisors have traditionally recalled their regular work forces to report for emergency work after hours and with the further exception that in isolated instances Supervisors may have recalled specially trained furloughed employees such as crane

and machine operators to perform special emergency duties, the position of Chief Clerk has been the one that solely recalled furloughed employees. The Carrier does not deny that Claimant and other clerical employees recall employees from time to time but states that the calls in this case were made in response to an emergency and that for many years emergency calls have been made by other than clerical employees. The Carrier further asserted that calling personnel to work was not the exclusive work of the clerical group and whether or not the personnel being recalled were furloughed or not was irrelevant. The Carrier also asserted on the property that Track Supervisors and Foremen have made the kinds of calls at issue as work incidental to their duties.

This case is resolved upon an assessment of whether the requisite burden of proof has been met which requires a careful reading of the Organization's definition of the work at issue and a further careful reading of specific evidence presented during the on-property handling of the Claim. The Organization seeks to limit the work at issue to the calling of furloughed as opposed to regular employees. In that regard, the Organization claims that, with the exception of skilled employees not involved in this case, the calling of such furloughed employees has been the work of the Chief Clerk for 35 years. But in its August 28, 1986, declination, the Carrier states the following:

"Our review of the Missabe's historical practice of calling employees reveals that such calls have not been made solely by employees represented by BRAC. Track supervisors and foremen have made those calls as a matter of practice over the years as work incidental to their duties as supervisors and foremen. This has been most apparent in cases like the instant claim where furloughed employees were needed on short notice for snow removal work. We recognize that it is not unusual for BRAC-represented clerks to call furloughed employees when sufficient advance notice is available. However, because weather conditions can make such advance notice impossible, supervisors and foremen have indeed recalled employees directly." [Emphasis in original and added.]

Thus, the Organization states that the limited work of calling furloughed as opposed to regular employees belonged to the Chief Clerk for 35 years. The Carrier, on the other hand, states that the calling of such furloughed employees did not belong to the Chief Clerk, but was performed in emergency situations by Supervisors and Foremen in addition to the Chief Clerk. Notwithstanding the positions and/or work nature of the Scope Rule

with the Organization's freeze frame analysis, the burden still remains with the Organization to show that the claimed work belonged to it. Specifically, in this case, the Organization was required to show that the specific work at issue on February 19, 1986, was that of the Chief Clerk. Given the specific statement of the Carrier quoted above that this kind of emergency work was shared and given that the Organization's response only states the opposite and does not sufficiently demonstrate evidence that the specific work performed on that date indeed was the Chief Clerk's and was not the type performed by strangers to the Agreement, we cannot say that the Organization has met its burden in this case.

The Awards relied upon by the Organization are not directly on point. In those cases, the Organization was able to meet its burden and demonstrate that the work at issue was work specifically performed by the employees. For example, in Third Division Award 26773, the Organization demonstrated that the computerized reporting system transferred certain billing work from clerical employees to Carmen. As the Board found:

"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." [Emphasis added.]

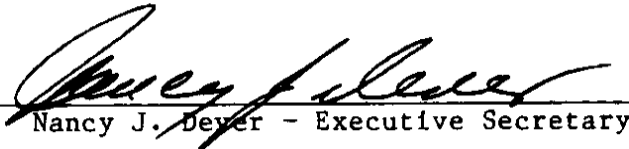
Here, the record establishes that in the past other than clerical employees have called furloughed employees for work. Similarly, in Third Division Award 26507, the Carrier therein eliminated the mobile agent position but, from time to time, conductors would enter the station and copy their own train orders directly from the dispatcher, which work was previously performed by a clerical employee. Recognizing that the Organization need not prove system wide exclusivity under a position and/or work Scope Rule, the Board held that the Scope Rule was violated "when the Carrier allowed train order work that had previously been assigned under the Agreement to be performed by individuals not covered by the Agreement." That kind of showing is missing in this matter. Likewise, in Third Division Award 26452, there was no dispute "that the work at issue is handled by Storehouse employees when they are on duty." Finally, in Third Division Award 25934, the involved "Micromation Memorandum defined the work of operating micromation equipment and the record established that covered employees were exclusively performing it as of the effective date of the 1979 amendment... [and] 'The Organization must demonstrate unilateral removal and assignment to strangers to the contract of a significant portion of that work which actually was performed as of [the effective date of the rule] by positions listed.'" [Emphasis added.] Again, that kind of evidence is absent in this case.

Based on the above, we must therefore deny the Claim.

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 21st day of June 1990.