

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28824
Docket No. CL-28854
91-3-89-3-255

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(The Lake Terminal Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10366) that:

1. Carrier violated the effective agreement when on July 1, 21, 22, 23, 24, 26, 28, August 5, 25, September 15, 19, 20, 1988, it required and/or permitted outsiders to perform work reserved to employees fully covered by said agreement.

2. Carrier shall now compensate the senior available off-duty clerical employee for eight (8) hours' pay at the time and one-half rate for each of the above referred to dates."

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 is a Rule 1 -- Scope dispute. The Rule has been found to be a position and work scope rule under which work performed under the Agreement is reserved to the Organization.

The record shows that certain arguments and materials have been presented for the first time to this body. Consequently, these may not be considered in our deliberations.

With respect to those matters properly before us, the relevant facts show that for a significant number of years the Carrier has recognized that the work at issue, namely the weighing of cars, belonged to the Organization, both by practice and under Rule 1. The only exception has been the handling of hot metal or blast furnace materials.

The events leading to this Claim reveal that the Carrier's scales became inoperable and needed repairs. The Carrier mainly argues that because the disputed work was performed on scales owned by the U.S. Steel Corporation, it has no control of how or who does the work. When so asserting, it relies on numerous past Awards which have essentially held that the Agreement extends only to property over which the Carrier has dominion. Clearly, such a principle is well-established. However, by so asserting, the Carrier has not given proper consideration to the facts and circumstances of this case. The Carrier's argument could be applied to eliminate other work, when equipment used to perform work coming under the scope of the Agreement becomes inoperable and it decides not to repair it. The Carrier, under its logic, by not repairing equipment, could shift work to others not in the bargaining unit. This is a course of action that clearly is not contemplated by the parties' Agreement.

For all of the foregoing

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IMPORTANT
CONCEPT

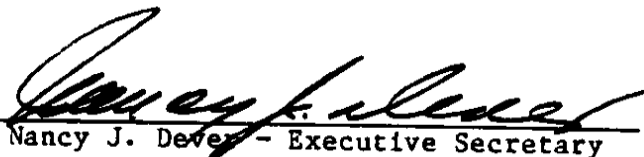
d.

Claim sustained.

ADJUSTMENT BOARD

By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.