

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29524
Docket No. CL-29567
93-3-90-3-524

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications
(International Union
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10512) that:

1. Carrier violated the Agreement at Greenville, Alabama on December 1, 1988, when it arbitrarily and capriciously abolished portions of the established duties of the Mobile Agent, a member of the clerical craft covered by the current Clerks' Agreement, operating out of Montgomery, Alabama. Further, Carrier, without the benefit of negotiation with the Organization, wrongfully allowed Ms. Jamie Johnson of Cargill, a non-railroad employee, to act as Agent for the CSXT and assume a portion of the duties taken away from the Mobile Agent.
2. Beginning on December 1, 1988 and continuing for each work day thence, Carrier will compensate the Senior Employee, Extra in preference, eight (8) hours' pay at the Mobile Agent rate of pay, daily, until this violation is resolved."

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 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.

Pursuant to a Power of Attorney dated November 9, 1987, the Carrier granted the Lapeyrouse Grain Company the option of signing its own bills of lading and, pursuant to the Contract, the bills would be deemed executed by an agent for the Carrier. On December 1, 1988, the Carrier instructed the Mobile Agent at Montgomery, Alabama, who serviced Lapeyrouse Grain Company at Greenville, Alabama, to discontinue signing Lapeyrouse bills of lading. (The Cargill Company later purchased Lapeyrouse Grain Company and thereafter Cargill employees, at Mobile, Alabama, executed the bills of lading, on behalf of the Carrier pursuant to the Power of Attorney.)

On January 13, 1989, the Organization initiated a claim that effective December 1, 1988, the Carrier contracted out work belonging to clerical employees in violation of Rule 1(b) of the applicable Agreement which provides:

"(b) Positions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations. It is understood that positions may be abolished if, in the Carrier's opinion, they are not needed, provided that any work remaining to be performed is reassigned to other positions covered by the Scope Rule."

The prior Scope Rule was general in nature. Almost simultaneous with the effective date (June 1, 1981) of the Scope Rule quoted above, the parties entered into a Memorandum of Understanding, titled "Addendum 1" which reads:

"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 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.

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.

Signed at Louisville, Kentucky, this 22nd day of May, 1981."

In essence, Addendum 1 provides that if persons other than those covered by the applicable clerical Agreement performed work at a location on the effective date of the new, positions/work Scope Rule, a dispute over whether or not such work belongs to the clerical craft is governed by the application of the pre-June 1, 1981 Scope Rule, that is, the general Scope Rule. However, if Clerks were exclusively performing the work at a location as of June 1, 1981, then the current Scope Rule, a positions or work Rule, controls the disposition of a claim concerning whether the work is reserved to employees covered by the applicable Agreement.

In this case, the Carrier asserted that Clerks, Conductors and Supervisors all executed Lapeyrouse bills of lading on and before May 22, 1981. Contrarily, the Organization argued that on May 22, 1981, and up until December 1, 1988, the Montgomery Mobile Agent and before him, the Greenville, Alabama Agent, signed Lapeyrouse Grain Company bills of lading.

There is substantial evidence in the record to support the Organization's claim. The Carrier related that in 1985, it began an in-depth study into the usefulness and efficiencies of having Carrier Agents continue to sign customer's bills of lading. This study implicitly demonstrates that, as of 1985, Carrier Agents, who were employees covered by the scope of the applicable clerical Agreement, were charged with signing the bills of lading.

Moreover, in a June 29, 1990 written statement the former Greenville Agent stated that between 1970 and 1980, the Lapeyrouse Grain Company brought its bills of lading to him for signature and that they were never signed by Conductors or Supervisors. Therefore, the evidence of record demonstrates that at Greenville, clerical employees, to the exclusion of all others, signed Lapeyrouse bills of lading on June 1, 1981, the effective date of Rule 1(b).

Next, the Carrier contended that the work of signing Lapeyrouse bills of lading disappeared and because the work was eliminated, the work was not assigned to strangers to the Agreement in violation of the Scope Rule. (Public Law Board No. 3545, Award 41). However, the evidence belies the Carrier's contention that the work vanished. The Carrier conceded it gave Lapeyrouse the option of signing its own bills of lading by giving the Company a Power of Attorney to exercise this option. The Carrier empowered Lapeyrouse to assume work formerly performed by the Mobile Agent. Therefore, the work in dispute, that is, the signing of bills of lading survived past December 1, 1988. Someone, but not Clerks, is still signing Lapeyrouse bills of lading on the Carrier's behalf. Thus, the Carrier removed work reserved to clerical employees by Rule 1(b).

The Organization bears the burden of proving all aspects of its claim. In this case, the Organization has not come forward with any evidence concerning the amount of time that the Montgomery Mobile Agent spent signing Lapeyrouse bills of lading prior to December 1, 1988. Thus, the Carrier correctly points out that the remedy requested in the instant claim is both excessive and speculative. Absent evidence concerning the quantum of work actually removed from the clerical craft, this Board may not render a monetary award. Therefore, this Board will order the Carrier to return the work to employees covered by the clerical Agreement.

In reaching our decision, the Board did not consider the Carrier's argument that the Organization failed to identify a proper claimant and the Organization's argument premised on the one man station Rule because these contentions were not handled on the property. This Board may not consider arguments which are raised, for the first time, before this Board.

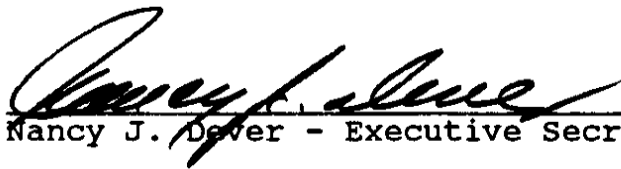
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A W A R D

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 3rd day of February 1993.