NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 THIRD DIVISION Award No. 29814

Docket No. CL-29838

93-3-91-3-218

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10571) that:

1. Carrier violated the Agreement at Mobile, Alabama when it failed and/or refused to call the Senior Available Employe, or an Extra Clerk, to perform extra clerical work done by a Supervisor.

2. Carrier shall now compensate the Senior Available Employe, extra in preference, at the Payroll Clerks' rate of $114.32 for violation of June 13, 1989."

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 employe 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 Organization's claim deals with the work of preparing taxi authorizations and invoices for transmission. It is claimed that said work was performed by a Supervisor at the stated location, rather than by clerical forces.

A 1979 document indicates that a Clerk would do the processing, but both the Trainmaster and a local union official concede that for 9 or 10 years prior to this claim, the work was performed by a Supervisor. In fact, the local union official stated:

> "Even in 1979 the caller at...kept the taxi authorizations in a folder in his desk...When the timekeeper was abolished the processing of taxi authorizations disappeared...for a time and no one questioned where it had gone. This may have been sloppy on the part of the organization but it was not intended to give our work away." (Emphasis supplied)

The Carrier argues that the doctrine of "laches" must certainly control this case, and we feel that its position is well taken.

In any event, we note that the dispute as to whether the case should be considered under the previous "general scope rule" or under the newer "positions or work" Scope Rule does not aid us. Under either Rule, the result would be the same. Certainly the Organization could not satisfy the "exclusivity" requirement under the general Scope Rule, and the "work" was obviously not reserved to the Clerks at the location at the appropriate time in question under the newer Rule.

It may well be accurate that silence alone does not amount to concurrence, as cited by the Organization. But here, there must be more than mere silence. The Organization knew that the work was done by the Timekeeper. It must have known that the same factors existed after the Timekeeper's position was abolished, yet it did nothing to claim rights to the work for ten years. The doctrine of laches must apply in a case such as this.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.