

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30038
Docket No. CL-29943
94-3-91-3-332

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood (GL-10601) that:

1. Carrier violated the Clerical Agreement at Louisville, Kentucky, beginning September 17, 1989, and continuing daily, when they removed the input of data work from the clerical craft and either allowed/instructed the Assistant Trainmaster/Trainmaster(s) to perform this work previously assigned to and performed by the clerical craft, mainly the Inventory Clerks, Position #123, #219, #317. The clerical work being performed is the data input through the Terminal Projection Screen using the CICS43 function "AMSJ." This working the EXTON report.
2. Carrier shall now compensate the Senior Available Clerk (extra in preference) working at Osborn Yard, Louisville, Kentucky, one (1) day's pay at the daily rate of \$111.68, September 17, 1989, and continuing until such time as this work is returned to the clerical craft at Louisville, Kentucky."

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.

This dispute is one of an increasingly common variety concerning the effects of implementation of new computer applications. In this instance, the Claim involves the placing on line of the Locomotive Management System, itself involving a revision of an earlier computer application.

There is no dispute as to the nature of the operational change. The Organization's Submission offers the following summary:

"...prior to September 17, 1989, the Assistant Trainmaster at Osborn Yard made all the pencilled entries on the [projected train schedule] form which was presented to the Inventory Clerk for entry into the computer. Beginning September 17, 1989, the Assistant Trainmaster began inputting the raw data directly into the computer, which gave rise to the dispute."

The Director of Labor Relations, in his September 6, 1990 reply to the Claim appeal, put it this way:

"The Trainmaster/Yardmaster is simply recording or transmitting electronically that information which he previously recorded with pen or pencil and/or verbally passed to the Operations Center via the Inventory Clerk.

The Carrier has implemented a new system which eliminated work, previously performed by a middleman, as a result of technological changes as contemplated by the Job Stabilization Agreement."

As a threshold procedural issue, the Carrier argues that the Claim is deficient in that it "fails to identify a proper claimant who would have been available to perform the disputed work." In these circumstances, the Board does not find this to bar review of the dispute on its merits. The Claim clearly sets forth the proposition that Inventory Clerks have been deprived of work; if such claim were sustained, identification of affected employees would pose no difficulty.

The Carrier also takes exception to the remedy sought (one day's pay) in view of the brief amount of time involved in entering the contested data. As will be seen below, further consideration of this issue is not required.

The record shows extensive discussion as to whether the Scope Rule of January 1, 1973, or the revised Scope Rule of June 1, 1981, should be considered applicable here. This question is not significant, since the Board finds, as argued by the Carrier, that the issue is not transfer of scope-covered work, but rather, the elimination of one portion of data transmission.

In consonance with other Awards in similar circumstances, the Board finds here that there was, in fact, no transfer of work. The data involved was originated by the Assistant Trainmaster before the introduction of the Locomotive Management System, and the Assistant Trainmaster continues in control thereof. The introduction of the new program, together with making computer keyboards and screens available, simply eliminates the double process of handwriting data and then having it entered into the computer. As indicated by the analysis of both the Organization and the Carrier, quoted above, the sole function lost by the Claimants is entry of data; they did not previously change, develop or restructure such data.

In sum, there is no demonstrated Rule violation in the technological extension of the computer, eliminating the need for an intermediate step. That some part of a clerical function was eliminated is obvious, but not prohibited. Third Division Award 25693 concerns a claim by Train Dispatchers as to being deprived of entering and maintaining train data. That Award concluded:

"In the case at hand, the Carrier merely has eliminated an intermediate step in the process of providing data to its computer.... The method of transmitting information which is to be entered on the train sheet is all that is at issue here, not the maintenance of the train sheet. Accordingly, when the process is examined with respect to a Scope Claim, it cannot be said or shown that exclusive Train Dispatcher's work has been transferred to these operators. We concur with numerous earlier Awards which have held that the installation of machines, such as here, does not constitute a Scope Rule violation, when work is not transferred."

The Organization cites previous sustaining Awards which it contends were reached under similar circumstances. Some or all of these are distinguishable from the dispute here under review. For example, Public Law Board No. 2668, Award 120 concerned not only use of a computer but also the actual work of "maintaining the inventory of freight cars" which was found to be transferred from

Clerks to Yardmasters. Likewise, Public Law Board No. 3438, Award 25 found contractual restrictions as to which craft or class may input certain computer data, leading to a sustaining of the claim. That Award, however, specifically noted as follows:

"In considering the Carrier's defense, it should be understood that this Board does not conclude that this or any other Carrier may not institute labor-saving devices and may not substitute more sophisticated equipment and machinery to replace prior messages sent by telephone, pencil and paper, word of mouth, etc."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of February 1994.

LABOR MEMBER'S DISSENT TO
THIRD DIVISION AWARD 30038, DOCKET CL-29943
(REFEREE H. L. MARX, JR.)

A Dissent is required in the case at bar because the Majority Opinion has erred and issued a decision which is incorrect and fails to follow the more thoughtful decisions regarding transfer of work.

The facts are not in dispute. The claim arose in Louisville, Kentucky, when on September 17, 1989, the Carrier issued instructions to implement the Locomotive Management System, which resulted in the input of certain raw data processing work being removed from coverage and assigned to Assistant Trainmaster not covered by the Agreement.

The Majority recognized such in the second paragraph on page 3 wherein it stated:

"As indicated by the analysis of both the Organization and the Carrier, quoted above, the sole function lost by the Claimants is entry of data;... (Underlining our emphasis)

That's exactly what the case was about the protection of work exclusively assigned to Inventory Clerks. One would think after reading the aforementioned that the logical extension and conclusion of the Board's findings would be since the Claimants had lost the opportunity to continue to input the raw data it was clear

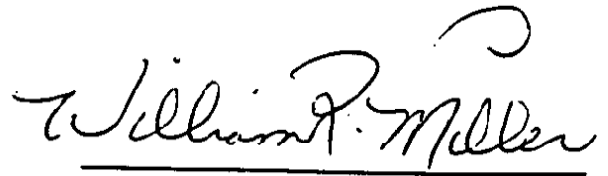
there had been a transfer of work in violation of the Agreement instead of an elimination thus the claim should be sustained.

Unfortunately the Majority Opinion's logic does not coincide with it's fact finding. After determining that the disputed work was taken from Clerks and given to Carrier Officers they simply chose to call that elimination rather than transference. In doing such the Majority has simply participated in semantical gimickery.

It is not disputed and it stands unrefuted that the work in question had always been done by Inventory Clerks. It is their work which can 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 indication in the record that Assistant Trainmasters have ever performed the work in the past nor is there any proof that clerical functions have ceased to exist. The same work is still being done except by different employes. The Scope Rule in dispute is a "position and work" Scope Rule that protects both positions and work. In this instance the Board has failed in it's responsibility to enforce the integrity of the Agreement so as to protect the work in dispute.

for the foregoing reasons Award 30038 carries no precedential value and requires strenuous dissent.

Respectfully submitted,

A handwritten signature in cursive script, reading "William R. Miller". The signature is written in dark ink and is positioned above a horizontal line.

William R. Miller,

Labor Member

DATE: March 4, 1994

CARRIER MEMBERS' RESPONSE TO
LABOR MEMBER'S DISSENT TO
AWARD 30038, DOCKET CL-29943
(Referee Marx)

The decision issued by the Majority was well reasoned and follows a long line of Awards regarding the elimination of an intermediate step.

The Organization has steadfastly endeavored to persuade Referees that the use of a computer by anyone other than a Clerk violates the Scope Rule of its Agreement, under the guise that the disputed work was transferred. This Award, as well as a host of other similar Awards, recognizes that Clerks do not have the exclusive right to enter data into the computer.

The Majority realized that the new procedure that precipitated this dispute eliminated a duplication of effort, when it stated in the second paragraph on page 3:

"The introduction of the new program, together with making computer keyboards and screens available, simply eliminates the double process of handwriting data and then having it entered into the computer."

Rather than give the handwritten data to a Clerk to type into the computer, the Assistant Trainmaster enters the data directly, which eliminated an intermediate step.

Michael C. Lesnik
M. C. LESNIK

Robert L. Hicks
R. L. HICKS

Mr. Fingehut
M. W. FINGEHUT

P. V. Varga
P. V. VARGA