

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30413
Docket No. CL-29763
94-3-91-3-139

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-10550) that:

1. Carrier violated the provisions of the current Clerk's Agreement at Hamlet, North Carolina on August 6, 1987 and has continued to do so three (3) shifts, 24 hours per day, since that time on a continuous basis by removing work covered by Scope Rules from BRAC/TCU employees at Yard "B" and giving such work to UTU yard trainmen without negotiation or agreement.
2. As a consequence thereof, Carrier shall now:
 - A. Compensate the Senior Qualified Employee, extra in preference, by shift, three (3) eight-hour shifts per day, on a continuing basis beginning with the 3:00 P.M. - 11:00 P.M. shift on August 6, 1987.
 - B. Re-establish any and all positions abolished as a result of this violation."

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 employee 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 record reflects that the United Transportation Union, which represents Trainmen, was duly notified of the pendency of this dispute and afforded an opportunity to file a Submission. It did not, however, file a Submission.

This dispute involves a situation in which Clerical employees at Hamlet Yard, Hamlet, North Carolina, had in the past been utilized to make a manual check of cars in the yard and prepare a listing of those cars from which switching lists were made, cars classified and waybills separated according to classifications. After the switching was completed, the classified cars were assembled for outbound movement. This operation required that a Yard "B" Clerk make a list of the classified cars being assembled and verify that list as the cars were pulled by the Yardmaster's tower. The Clerk then informed a Yard "A" Clerk of the order of the cars in the outbound train, the waybills were accumulated accordingly and the train departed.

In July 1987, this manual check, listing and re-check procedure was replaced by Carrier's installation of an automated Train Yard Management System (TYMS) in which a remote controlled camera was used to scan trains as they arrived in the yard, generated a video tape of the train and a Clerk made a switch list of the train from the video tape. The resultant information was input directly into the TYMS computer which thereafter tracked the switching of the cars and continually updated the switching results. When the outbound train was ready to be assembled, the computer produced a listing of cars for the yard train crew to pull which they did and then informed the Clerk of any errors which may have occurred in the procedure.

As a result of the installation of this TYMS operation, Carrier abolished five Yard "B" Clerical positions whose previous duties of manually checking cars and tracks had been eliminated by the electronic procedure. At the same time as the above mentioned Clerk positions were abolished at Yard "B", five new Clerk positions were established at Yard "A". There was no net reduction in the total number of Clerical positions at Hamlet Yard.

The Claim as presented and progressed by the Organization beginning August 6, 1987, alleged that with the abolishment of the five Yard "B" Clerks, Carrier thereafter utilized Yard Trainmen to perform duties previously performed by the Clerks. It argued that Carrier was in violation of the "positions or work" Scope Rule by permitting the Yard Trainmen to check the tracks and/or cuts of cars which were pulled by Yard "B" tower. The Organization did not refute the fact that five Clerk positions were created at Yard "A" at the same time as the Yard "B" positions were abolished, but contended that "whether or not other positions were re-established at Yard "A" does not minimize the violation." The Organization cited with favor Award 12 of Public Law Board No. 3545 which, it says involved a similar claim on this property which was decided in favor of the employees. It also relied on Award 120 of Public Law Board No. 2668 in support of its argument in this case.

The Carrier, for its part, argued that the Claim as presented to the Board was procedurally defective in that there was no properly identifiable Claimant mentioned in the Statement of Claim. It also argued that the Claim as presented was excessive and that the Organization failed to justify either by argument or Rule any support for a claim of eight hours pay on each of three shifts per day. On the merits, Carrier argued that the work of manually checking tracks and cars at Hamlet Yard had been eliminated by the TYMS computer and was not reassigned to any other group of employees. Carrier points with favor to Award 79 of Public Law Board No. 3545 which, it says, involved a similar claim on this property which was decided in favor of the Carrier. Carrier additionally contended that any list of cars made by the train crewmen was nothing more than that which may properly be prepared by a Trainman in connection with the cars which he and his crew are handling in the normal performance of their Trainmen duties. Finally, Carrier insisted that the Board is without authority to order the re-establishment by Carrier of the five Yard "B" Clerical positions as demanded in the Statement of Claim of this dispute. It referred the Board to Award 1 of Public Law Board No. 3430 as precedent in support of this contention.

Before addressing the merits issues involved in this case, we will first address the procedural contentions raised by the Carrier. Its voluminous arguments set forth in its Submission to this Board on the issues of unnamed Claimants and the excessive nature of the claims are, at best, specious. There is not one iota of evidence in the case file of this dispute to suggest that either of these issues was raised at any time during the more than three and one-half years during which this dispute was being "handled" on the property. To raise such issues for the first time before the Board is specifically prohibited. It is a firmly documented condition of grievance procedure under the Railway Labor Act that only evidence and argument which is made a part of the on-property handling of a dispute may properly be considered by this Board.

Carrier's arguments relative to unnamed Claimants and the excessive nature of the Claim in this case are summarily dismissed.

There is no argument relative to the fact that prior to the date of this Claim, Clerks manually checked tracks and cuts of cars pulled by the Yard "B" tower. What is in argument is whether, after the inauguration of the TYMS computer, Clerks were still needed to make manual checks of the cars in duplication of the information generated by the TYMS apparatus.

The Board considered the several arguments and reviewed all precedential citations presented by the parties. It is the opinion of the Board that there has been no violation of the Clerk's "position and work" Scope Rule in this case. As for the applicability of Award 12 of Public Law Board No. 3545 in this case, our review determines that the Award is noteworthy for its paucity of reasoning in support of its conclusion. The single sentence saying, "The evidence of record establishes that at this yard under the particular circumstances, Carrier did indeed violate the Scope Rule," does not impart universal application of this opinion to other than "at this yard under the particular circumstances" as were found in that case. The Board is not convinced that Award 12 of Public Law Board No. 3545 has any application under the circumstances involved in this case. Additionally, in Award 120 of Public Law Board No. 2668, we find similar limitations, to wit, "The Board's holding in this dispute are (sic) based on the facts as presented in the record and apply to the situation in Bellevue, Ohio, at the time of the claim."

On the other hand, the similarity of fact situation, the clearly defined logic, the comparison of prior precedent as found in Award 79 of Public Law Board No. 3545 - which was authored by the same Referee as is found in Award 12 of Public Law Board No. 3545 - has convincing reasoning to add support to the decision in this case. Here, as there, the manual track checking work which had formerly been performed by the Yard "B" Clerks was eliminated by the advent of the TYMS computer. There is ample authority for the principle that a Carrier has the right to eliminate work. There is, as well, ample authority for the principle that elimination of a work function does not constitute a transfer or reassignment of such work. The installation of labor saving devices has long been held to be a situation which does not create a violation of Scope Rules.

In this dispute, the Board has no problem accepting the Organization's argument relative to the absence of a requirement to prove exclusivity of performance in a "position or work" Scope Rule. That principle, however, does not come into play in this case. Here the necessity for manual track checks was replaced with a camera and a computer. The necessity for manual track checks by Clerks ceased to exist. It was not assigned to any other group of employees.

As for the Organization's demand that the Board order the re-establishment of the abolished positions, we need not elaborate in detail on this issue inasmuch as our decision on this dispute has already been set forth. We do note, however, that Boards established under Section 3 of the Railway Labor Act, as amended, lack authority to grant injunctive relief and, therefore, may not properly order the restoration of abolished positions. This principle finds support in Second Division Award 10708 as well as Award 83 of Public Law Board No. 1790 and Award 6 of Public Law Board No. 3189.

For all of the reasons set forth herein, the Claim is denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.