Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30481
Docket No. CL-30274
94-3-92-3-53

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

PARTIES TO DISPUTE: (Transportation-Communications
(International Union
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10654) that:

(A) Carrier violated the terms of the General Agreement and Memoranda thereto when on December 22, 1988, it used Supervisor C. G. Lambert, to transcribe and type letters, and to handle correspondence; and,

(B) Carrier shall now arrange to allow Clerk R. A. Kerner, ID 183098, eight (8) hours at the punitive rate of $118.96 per day for the above date."

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 Scope Rule in this dispute is a "Positions or Work" type of Rule. Despite Carrier's assertion to the contrary, this Board has repeatedly held that the Organization does not need to demonstrate exclusive past performance of the disputed work to establish scope coverage. It is sufficient that the work has been performed by covered employees. See, for example, Third Division Awards 26507, 27581 and 29093. In analyzing this dispute, therefore, it is important to examine very closely what precise work was performed by the supervisor and what precise work was performed previously by clerical personnel. Of course, the Organization bears the burden of proof to establish these facts.

From the on-property record, it is reasonably clear that the supervisor, while working at home, used a computerized word processing program and dot-matrix type printer to prepare responses to six employee time claims. The six responses, which are included in the on-property record, are far from letter quality and are not printed on Carrier letterhead stationery. Rather than have the dot-matrix responses typed into letter quality format, the supervisor issued them to the Organization "as is."

In addition to close examination of the actual work performed, as noted earlier, it is also important to carefully note the distinction between what the Organization is claiming as scope covered work and what it is not claiming as covered work. This distinction is significant because the Scope Rule includes, within its description of clerical work, the words, "... transcribing and writing letters, ... handling of correspondence, ..." It also provides as follows:

> "Work covered by this scope rule which is incident to and directly attached to the primary duties of an employee not covered by this Agreement may be performed by such employee, provided the performance of such work does not involve the preponderance of the duties of such other employee...."

On the property, the Carrier asserted that responding to time claims is not covered work. The Organization did not disagree. Indeed, the Organization conceded that its contention "...was not based on responding to claims but is based on transcribing and writing letters, and handling correspondence." Moreover, the Carrier also asserted that there was no requirement to have draft responses retyped by a clerical employee or to furnish the Organization with typewritten responses. It contended that furnishing a handwritten document to the Organization would be valid under the Agreement. The Organization did not dispute these assertions.

From the foregoing discussion, it must be concluded that the work associated with preparing claim responses, which consists of setting down a supervisor's mental thoughts and decisions on paper, is not, on this record, scope covered work. Rather, it appears that this work was previously done, without objection, by the supervisor with a pen or a pencil to prepare a handwritten draft. In this dispute, the supervisor availed himself of a technological advance and substituted a computer and dot-matrix printer for the pen or pencil. Nonetheless, the actual work function performed was setting his thoughts and decisions down on paper. Such work is also incidental to his duty to prepare claim responses. On the record before us, therefore, we do not find that this limited activity constituted scope covered work.

It is also not entirely clear, from the on-property record, what precise work was previously performed by clerical employees to trigger the protection of the Scope Rule. In addressing this aspect of the dispute, we have not considered any information contained in the Submissions that was not part of the on-property record. We are mindful that the Organization had the burden of proof to establish the extent of scope coverage with reasonable clarity. Its failure to do so on the property would ordinarily be grounds for denying the claim without further elaboration. We are of the understanding, however, that several similar claims have been held in abeyance pending the Award in this dispute. We, therefore, provide the following additional discussion in hopes that it will assist the parties in disposing of the other cases.

If the on-property record is construed in a manner most favorable to the Organization, it appears that the extent of the past work performed by clerical employees in this kind of dispute has been to transform the supervisor's responses from handwritten hardcopy into typewritten, letter quality form. That work was not performed in this case. Rather, the supervisor chose to issue the dot-matrix quality responses rather than have them typed. As noted earlier, the Organization did not challenge the assertion that the supervisor's decision to issue a less than letter quality response was not violative of the Agreement.

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 13th day of September 1994.