

RECEIVEDNATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30630
Docket No. CL-31123
94-3-93-3-129

G. L. HART

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Southern Pacific, Chicago and St. Louis
(Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10936) that:

1. Carrier violated the Scope Rule, among others, of the Agreement between the parties beginning January 2, 1992, when it began contracting out clerical work at the IMX facility in Chicago, Illinois, to outsiders who hold no seniority rights under the Agreement.
2. Carrier further violated the Agreement, when it failed to properly respond to the grievance as required by Rule 34.
3. Carrier shall now be required to pay the senior available unassigned extra Customer Service Representative for one (1) day's pay each day commencing January 2, 1992, or if none are available, on behalf of the senior regularly assigned Customer Service Representative available at the time and one-half rate commencing January 2, 1992, and continuing each day until this claim is settled or the situation ceases to exist. Rates of pay to be determined by the class rate of the involved positions or the employee's assigned rate of pay, whichever is greater.

This claim is for the aforementioned amounts to be multiplied by the number of persons performing such work at IMX facility on a daily basis. To be determined by a joint check between TCU and SPCSL."

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.

In October 1991, the Carrier began operating intermodal trains out of the Illinois Central's IMX facility at Chicago, Illinois. The Carrier had a lease agreement with the IC to operate out of the facility. Neither party has furnished this Board with a copy of the lease agreement.

On February 25, 1992, the Organization filed a claim with the designated officer at St. Louis, Missouri. On February 21, 1992, the Carrier had sent the Local Chairman a letter informing him the designated officer's mail should be sent to Houston, Texas. The Local Chairman wrote the designated officer on May 23, 1992, requesting the claim be allowed because the Organization had not received a response. Again he sent the letter to St. Louis, not Houston. On May 29, 1992, the claim was appealed to the highest designated officer. On June 5, 1992, the original Carrier Officer declined the claim. The Carrier argues the claim should be barred under the time limit rule because the claim was not submitted to the proper location, and likewise the Organization avers the claim should be allowed because the Carrier's declination was not timely. This Board rejects both parties position in regard to the time limit.

In reviewing the claim, the record is void of any evidence as to the work PacRail is performing for Southern Pacific, Chicago and St. Louis Railroad Company. Mere assertions that non-clerical employees are performing work under the Scope Rule is not sufficient. Also the Organization fails to identify what employees were deprived of work. In Third Division Award 29128, this Board held:

"Without consideration of a procedural question raised by Carrier, there are a number of significant and fatal flaws in this dispute. There is no evidence of any employee being deprived of earnings or aggrieved in any fashion in this matter. Even more importantly, there is no identification in the record of this claim of what work was being performed by non-clerical employees. Particularly in alleged Scope Rule violations, it is a sine qua non that the work in dispute must be identified; mere assertions are inadequate in the perfection of the claim."

Also in Third Division Award 26228, the Board held:

"In reviewing this Claim, however, we find the record on the property to be barren of any evidence of a probative nature to support Claimant's case. It is a basic tenet of the Railway Labor Act that all evidence to support a Claim must be advanced by the Parties on the property prior to progressing the Claim to the National Railroad Adjustment Board. That was not done in this instance and the Claim must consequently be denied."

The Organization has failed to meet its burden of proof in the case, and the claim must be 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 28th day of December 1994.