

Form 1 **RECEIVED** NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30642
Docket No. CL-30153
94-3-91-3-583

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
(
(Lake Terminal Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10630) that:

1. Carrier violated the effective Agreement when on the date set forth below it required and/or permitted employees not covered by said agreement to perform clerical duties which are reserved to employees fully covered thereby.

2. Carrier shall now compensate senior off-duty employee, furloughed in preference, for eight (8) hours' pay at the appropriate rate; i.e., straight time if unassigned and time and one-half if regularly assigned, for each of dates November 24, December 3, 16, 24, 30, 1989 and January 4, 1990."

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but it did not file a Submission.

The Organization contends that on the specified claim dates the Carrier assigned non-covered personnel to perform clerical work in violation of the Scope Rule. The Organization notes that the effective Scope Rule is a "positions and work" type of Rule. It reads, in pertinent part, as follows:

"These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees, subject to such modifications as are included herein. Positions or work coming within the scope of this agreement belong to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

The Claim apparently arose when Carrier required its conductors to list car initials and numbers on its Yardmaster Orders, Form LT-100B. The parties expended considerable effort, on the property, attempting to characterize this requirement. The Organization maintained that it was a new requirement that improperly invaded the clerical function of track checking. Carrier, on the other hand, contended that the listing of car numbers was pursuant to a longstanding practice of having operating crews account for the cars they move. Carrier says the requirement represents nothing new.

In support of its claims, the Organization relies on Third Division Awards 3490 and 21933, Public Law Board No. 4363, Award 6, involving these same parties, and Special Board of Adjustment No. 307, Award 31, involving this Carrier. We find no fault with the rationale and conclusions reached in these Awards. However, the Claim here must be denied on burden of proof grounds.

It is axiomatic that the party asserting a claim bears the burden of proof to establish each of its requisite elements. The Scope Rule in question prohibits removal of work that was previously performed by clerical employees. Not only does the on-property record before us fail to provide any evidence that clerical employees have lost work they previously performed, it does not make any allegation that such work was removed by the Carrier and assigned to non-covered employees. In the absence of such evidence, it must be concluded, on this record, that the clerical employees are continuing to perform track checking work at a level that is undiminished as a result of Carrier's actions.

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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.