

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31104
Docket No. CL-31548
95-3-93-3-610

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
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(CSX/Sea-Land Terminals, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10987) that:

1. Claim that the Carrier violated the Agreement when beginning March 14, 1992, and continuing, it allowed, required or permitted employees not covered by the Agreement to perform Gate Inspection work at the Jacksonville Intermodal Facility.
2. As a result of the aforementioned violation, Carrier shall now be required to return the disputed work to TCU-represented employees and compensate the Senior Available Employee, extra in preference, eight (8) hours' pay at the applicable rate each day, beginning March 14, 1992, until such time as the work is returned.

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.

The parties were given due notice of hearing thereon.

Carrier in this dispute is a company engaged in the management of intermodal facilities on property owned or leased for the

purpose of transferring freight, in trailers or containers, between railroad flatcars and highway vehicles.

The claim initially contended that certain "gate inspection" work was being performed, on a continuing basis, by non-covered personnel. The Organization contended that a new Agreement, signed January 7, 1992 and effective February 1, 1992, exclusively reserved all trailer inspection work to covered employees.

Carrier replied that "gate inspection" work was being bypassed for certain time-sensitive shipments, specifically UPS and US Mail. It said gate inspections were not being performed on these shipments by anybody. Carrier conceded that non-covered representatives did log units in and out, but clarified that this was the same as any driver "...would at the talk backs." Finally, Carrier said that all physical gate inspection work, when it was being done, was performed by covered employees.

After conferencing the claim, the Organization altered its position to contend that non-covered representatives were performing "partial inspection of trailers" consisting of a listing, by date, of trailer initials and numbers, and time in/out. In the same correspondence, the Organization acknowledged that trailer inspections have not been exclusively performed by covered employees in the past. It reiterated, however, that the new Agreement exclusively reserved such work to covered employees.

Carrier disputed the Organization's exclusive reservation contention. It also challenged the claim on procedural grounds for lack of specificity in identifying Claimant(s).

While the record in this matter contains an ample number of broad, general assertions by the Organization, it is seriously lacking in specifics. Indeed, nowhere does it provide a clear definition of what work functions are encompassed within the terms "gate inspection." The Organization points to the handwritten annotations by non-covered personnel made on certain documents. However, the record does not establish that such annotations were not the routine and ordinary work of the UPS and US Mail shipper representatives who are normally present on the property. Nor does the record establish that such annotation work was ever performed by covered employees. It is clear, however, that the forms on which the annotations are made are computer printouts that are generated by covered employees for the use of the non-covered personnel. In addition, certain handwritten lists are also prepared by the non-covered personnel. Both the annotated forms and the handwritten lists are returned to covered employees for computer data entry by covered employees. It appears, from the

record, that this is the manner in which such materials are normally handled.

To prevail in this matter, the Organization had the burden of proof to establish either of the following: First, it had to show that the new Agreement exclusively reserved the disputed work to covered employees. Our review of the provisions cited by the Organization fails to reveal language that clearly and unambiguously reserves such work. In addition, no other evidence was provided to buttress the Organization's contention. Second, since the underlying Agreement contains a "positions and work" Scope Rule, the Organization's evidence had to show that covered employees had previously performed the annotation work that was done by non-covered personnel. As stated earlier, there is no such evidence in this record. Having failed to satisfy its burden of proof in this matter, we must deny the claim.

In view of our denial of the claim for failure of proof, we do not reach the procedural issue concerning the identity of Claimants.

AWARD

Claim denied.

ORDER

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 1st day of September 1995.