

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31732
Docket No. CL-31426
95-3-93-3-412**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Transportation Communications International
(Union**

PARTIES TO DISPUTE: (

(Delaware and Hudson Railroad Company

**STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (92-DH032) that:**

- (a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rules 1, 5, Appendix I and other Rules, when commencing on or about May 20, 1992, it removed duties and transferred same from Delaware & Hudson clerical positions located at Clifton Park, NY, permitting employees of the Soo Line Railroad, located at Milwaukee, WI, to perform same, such as, but not limited to; inputting cars on track into the computer inventory, releasing bills for same in the suspense file and making any corrections needed, for "off road trains" such as CSXT and NS.**
- (b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro rata hourly rate of \$13.64 per day, commencing May 20, 1992, and continuing for each and everyday thereafter, 24 hours a day, 7 days a week until this violation is corrected.**
- (c) Claimants are qualified and should be used in seniority order, subject to their availability, on a continual basis to perform the clerical duties claimed.**
- (d) That in order to terminate this claim, all clerical work must be returned to employees covered under the Scope of the aforementioned Clerks' Rules Agreement.**
- (e) This claim has been presented in accordance with Rule 28-2, and should be allowed.**

ATTACHMENT 'A'

NAME	POSITION NO.:
R. WESCOTT	31
J. CULLITON	32
S. MCINTYRE	33
R. O'DONNELL	34
B. CROWLEY	35
S. KAPINOS	36
D. GILCHRIST	58
S. MOORE	62
J. LANZONE	65
G. SHIELDS	63
A. NOVELLO	70

Each of the aforementioned named are Claimants in the claim dated July 17, 1992.

In addition to these named Claimants, the Carrier should also consider any subsequent incumbents to their respective positions mentioned above, as Claimants beginning the date they become qualified on same."

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 were given due notice of hearing thereon.

On June 20, 1988, the Delaware and Hudson Railway Company filed for relief under Chapter 11 of the Bankruptcy Code, in the U.S. Bankruptcy Court for the District of Delaware. On February 28, 1990, the D&H Trustees in Bankruptcy began operating the railroad. On September 24, 1990, the D&H Corporation (now operating the railroad) entered into a Collective Agreement with the Transportation Communications International Union. This Agreement became effective on September 26, 1990. Ultimately, on January 18, 1991, the Carrier was purchased by D&H Corporation/CP (Canadian Pacific) Rail.

On May 20, 1992, CP Rail activated a new Electronic Data Interchange (EDI) system, which allowed shipping customers and other users to input waybill data directly into the CP System computer. As a result, five clerical positions on the D&H were abolished -- four effective August 26, 1992 and one effective September 2, 1992.

A claim was filed on July 17, 1992, in which the Organization alleged that work reserved to the D&H TCIU represented employees located at Clifton Park, New York, had been transferred to Soo Line employees in a Transportation Service Center located in Milwaukee, Wisconsin, in violation of the current Agreement. Carrier denied the claim, citing Rule 29 - Electronic Data Interchange - of the Agreement between the Parties. In its denial, dated August 13, 1992, Carrier stated that the work at issue had been eliminated, not transferred and, accordingly, the ensuing abolishments were not in violation of the Agreement:

"...In accordance with Rule 29 - Electronic Data Interchange - Electronic data may be transmitted, received and exchanged among railroads and between them and their shippers and/or receivers without any requirement that employees represented by TCU participate in such function. In the instant case, duties performed by clerical staff manually loading of tracks into computer is now automatically completed by EDI.

With respect to releasing bills for cars in the suspense file, this function is performed by EDI and is in accordance with Rule 29 of the Agreement.

Any corrections needed for off road trains such as CSXT and NS continue to be performed by clerical personnel at Clifton Park, N.Y.

In summary, the Carrier maintains that EDI performs all functions formally performed by D&H Railroad Company, Inc. employees with the exception of the requirement to correct billing improperly inputted by EDI.

The only employees effected by this change are personnel who were hired after CP Rail acquisition of the D&H Railroad. These employees were advised that they were being hired on a temporary basis and would not be required with the advent of EDI."

The claim was subsequently processed in the usual manner, up to and including the highest Carrier officer authorized to handle such matters. Following conference on the property, it remained unresolved.

Rule 29 reads in pertinent part as follows:

- "(A) Except as provided hereunder, nothing in this Rule shall be construed to permit the removal of work and functions currently covered under individual scope rules at the property level.
- (B) Electronic data may be transmitted, received and exchanged among railroads and between them, their shippers and/or receivers (or their agents), including the use of Railinc or other similar data switching services, without any requirement that employees represented by TCU participate in such function. Input and retrieval of data between railroads and their shippers and/or receivers (or their agents) must be related to the shipper's or receiver's business.
- (C) If requested by the Organization, the Carrier will furnish on a monthly basis the name and location of customers accessing its computers under this Rule and the estimated time utilized for data entry."

It is the position of the Organization that the Carrier removed work previously performed by TCU covered employees and gave it to the Soo Line employees in Milwaukee, Wisconsin. The Organization provided on this record two extensive lists of duties performed by D&H Clerks at Clifton Park prior to the installation of the EDI System. The Organization maintains that the duties performed by the D&H Clerks have been transferred from Clifton Park to Milwaukee, and that only the method of performing those duties has been changed; the work itself remains intact and is the province of D&H Clerks.

The Carrier maintains that the work at issue has, in fact, disappeared, since customers are now entering data previously entered by TCU employees -- a technical evolution permitted under Rule 29 (supra). The Carrier states that the clerical forces in Milwaukee are not inputting waybill data that was previously provided TCU forces in Clifton Park. Instead, other railroads, shippers, and/or users are inputting billing information directly into the CP Rail System EDI system, rather than providing that same information on a piece of paper to the Clerks at Clifton Park. The Carrier further points out that if users make errors in the information they provide the EDI, the system identifies such "exceptions." Then the TCU Clerk in Milwaukee who is responsible for monitoring the integrity of the entire EDI system throughout CP Rail System corrects such information in conjunction with and incidental to his own duties. The Carrier maintains that the amount of time spent by Milwaukee Clerks making corrections to errors made by users who previously provided such information manually to clerical employees in Clifton Park is minimal.

The issues in this claim do not constitute a case of first impression. Numerous cases on this Board have dealt with the computerization of work processes and the consequent abolishment of positions. At the core of such decisions is the question of whether work has been actually eliminated in the process of adopting the "labor saving" device. In this case, Carrier argues persuasively that most of the work claimed by the Organization has, in fact, been eliminated. By allowing shipping customers and other users to input data directly, Carrier eliminated a considerable amount of the work formerly performed by Claimants.

As this Board has found on numerous occasions (See Third Division Awards 30918, 27330, 25902, and 23458) absent Agreement language to the contrary, Carrier is within its rights to install labor saving devices, and the consequent elimination of work does not constitute a violation of the Agreement.

Remaining at issue, however, is the work involving correction of so-called "exceptions." In its August 13, 1992 letter Carrier asserts that "corrections needed for off road trains such as CSXT and NS continue to be performed by clerical personnel at Clifton Park, N.Y." In later correspondence dated August 31, 1992, however, Carrier states that:

"Because the new CP EDI system is currently being monitored in Milwaukee, any exceptions or corrections to data entered by the customers or users are being handled by Soo clerical forces in conjunction with and incidental to their other duties. Since this CP EDI system is new technology, it is my understanding this monitoring was not a function performed by D&H clerical forces.

The inputting of data is being accomplished by users of the system and the transmission of data and releasing bills from suspense is being accomplished by the system automatically. No train reporting is being performed. Any exceptions in the system are the result of errors that have been made by the users and must be corrected to protect the integrity of the system. These exceptions are minimal, even at this time." (Emphasis added).

Rule 1, Representation/Scope, §(c), provides:

"Clerical duties covered by this Rule which may be incidental to the primary duties of an employee not covered by this Agreement, may be performed by such employee provided the performance of such duties does not involve the preponderance of the duties of the other employee not covered by this Agreement."

If it is the case, as the Organization proposes, that the work of correcting exceptions, previously performed by D&H Clerks, is being performed in much the same manner by Soo Line Clerks, then the Organization might prevail with respect to that particular task, if it were able to show that the amount of time spent by Soo Line Clerks performing the work constitutes a "preponderance of the duties" of one or more of those Clerks or the work was not "incidental to the[ir] primary duties." After a careful review of the lengthy and convoluted record before the Board in this case, however, it is unclear whether the Soo Line Clerks are actually performing the work in question (see Carrier's letters, *supra*), and if they are, whether such performance constitutes a minimal or substantial part of their duties. Accordingly, in this instance, the Board finds that the Organization has not met its burden of persuasion.

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 25th day of September 1996.