

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32030
Docket No. CL-32663
97-3-95-3-593**

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: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11190) on behalf of TCU Clerk James Price that:

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, and particularly Rules 1 (The Scope Rule), 1-B-1, 2-A-1, 2-A-5, 2-B-1, 4-C-1, 4-F-2, 9-A-1, and others, when, on November 5, 1993, outside contracted truck driver Tony Roman (Evans Trucking) was ordered to transport Amtrak material in an Amtrak vehicle from Wilmington, DE, to Sunnyside, NY. Tractor-chauffeur operator James Price was available and qualified on November 5, 1993, but was not given the opportunity to perform his duties.

(b) Claimant Price should now be allowed eight (8) hours at time and one half to satisfy this claim.

(c) Claim filed in accordance with Rule 7-B-1 of the Agreement and should be allowed."

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.

At the time this claim arose, Claimant was employed as a Chauffeur/Tractor Operator at Carrier's Wilmington, Delaware, Mechanical Facility. On November 5, 1993, a truck driver from an outside trucking firm was used to transport Carrier material from Wilmington to Sunnyside Yard, New York, in a Carrier vehicle. In a letter dated December 20, 1993, the TCU District Chairman filed a claim for eight hours pay at the time and one half rate on behalf of Claimant. That claim was denied on February 8, 1994, and was subsequently progressed in the usual manner.

The Organization alleges that Rule 1 – Scope of the Agreement has been violated; in particular, the portion which reads as follows:

“* * *

Tractor Operators & Tractor Operator Helpers (Stores and Station Department)

* * *

(e) It is not the intention of the Corporation to have supervisors perform work which is within the scope of this agreement. However, it is recognized that supervisors will occasionally perform such work, when necessary, under critical and/or emergency conditions, while instructing employees, and/or when incidental to their assigned duties. Supervisors shall not be used to displace or replace employees regularly assigned to perform the task, nor will the supervisors be used to negate the provisions of the overtime rule of this Agreement.”

The Organization maintains that the Scope Rule establishes a contractual right to the work in question to Claimant. Since Claimant regularly drove from point to point, he had clearly performed the work in the normal course of his duties. Moreover, the Organization contends that Rule 1(e) contemplates that supervisors may occasionally perform clerical work, but that non-contract employees are not included in that provision. The Organization further maintains that the use of a non-clerical employee to transport materials was not, as Carrier asserts, a long-standing arrangement. The Scope Rule herein is not bare of restraint, insofar as Carrier's assignment of work is concerned, and Carrier is not free to do what it did in the present case (Third Division Awards 3746, 3746, and 11072).

The Carrier asserts that the parties' Scope Rule was not violated. It is a general Scope Rule, and does not reserve the work in question to members of the TCU craft. In addition, the Carrier urges that there is nothing in the record to demonstrate that truck driver work belongs to the TCU Organization. The Carrier notes that it was pointed out on the property, without refutation, that employees of other crafts and also outside contractors at all Carrier facilities have traditionally and historically performed the work of pick-up and delivery of Carrier materials between its various facilities and no claims were filed.

A careful review of the record indicates that the Organization has failed to carry the burden of persuasion in this case. The Scope Rule in the Parties' Agreement is general in nature. Nowhere in that rule is the work at issue reserved to members of the TCU. The Organization has not presented evidence, beyond assertions, that Carrier violated the Scope Rule when it assigned an outside contracted truck driver to convey the materials between Wilmington, Delaware, and Sunnyside Yard, New York. It has been held on this and other Boards that in order to prove a Scope Rule violation under a general Scope Rule, the Organization must show that the work at issue was reserved to TCU members by past practice, tradition, or custom on a system-wide basis (Third Division Awards 29598; 31096; and Public Law Board No. 2792, Award 1). The Organization in this case has failed to do so. Under the circumstances, Claimant's availability is moot (Third Division Awards 21268 and 19833).

AWARD

Claim denied.

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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 6th day of May 1997.