

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32170
Docket No. CL-32651
97-3-95-3-576**

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-11184) that:

(a) The Carrier violated the Rules Agreement dated July 27, 1976, as amended and revised, and particularly Rule 1, ‘The Scope Rule,’ as well as Rules 1-B-1, 2-A-1, 4-C-1, 4-F-2, 9-A-1 and others, when the Carrier assigned Mechanic Scott Cerra to perform clerical duties such as collecting and filling out Material Requisition forms, Telephone Quotation Bid forms, ordering material, as well as many other clerical functions at the rate of pay of \$14.70/hour.

(b) Claimant Lou White should now be allowed seven and one-half (7 1/2) hours per day at time and one-half commencing November 1, 1993, and continuing until the duties Mr. Cerra is currently performing are properly assigned to a Clerical position.

(c) Claim has been presented in accordance with Rule 7-B-1 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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

At the time this case arose, Claimant was the regular incumbent of Store Attendant Position 6BMCSA-02, at Carrier's Bear, Delaware, facility. His tour of duty was from 2:30 P.M. to 10:30 P.M., Monday through Friday, with rest days of Saturday and Sunday. By letter of November 12, 1993, the Organization filed a claim in which it alleged that Carrier had violated Rule 1 (Scope) and other Rules when it permitted Maintenance of Way Repairman Scott Cerra to perform certain clerical functions on a daily basis beginning November 1, 1993. As remedy, the Organization requested that Claimant be allowed seven and one-half hours per day at the time and one-half rate on a continuing basis from the date cited. That claim was denied on December 22, 1993, and was subsequently progressed in the usual manner up to and including the highest Carrier officer empowered to handle such matters.

It is the position of the Organization that the Carrier has violated several Rules of the Agreement, especially Rule 1 - Scope. That Rule reads in pertinent part as follows:

"(a) These rules shall govern the hours, compensation and working conditions of all employees engaged in the work of the crafts or classes of (1) clerical, office, station and storehouse employees; and (2) station, service employees, subject to the exceptions listed herein.

Clerks and operators of all types of office machines who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, handling of correspondence and similar

work, making reservations and selling tickets, and employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training, such as:

Typewriters
Adding Machines
Calculating Machines
Bookkeeping Machines
Accounting Machines
Timekeeping Machines
Statistical Machines
Teletype Machines
Dictaphone Machines
Key punch Machines
Electronic Accounting Machines

and other similar equipment used in the performance of clerical work as herein defined, shall be designated as clerks.”

The Organization maintains that the “sword and shield” theory enunciated by previous Boards applies in this case. Employees cannot reach for work now done by those outside the Agreement, but work under the Agreement cannot be taken from Scope-covered employees. The Organization also points out that there is a long line of Awards disputing Carrier’s notion that a “general” Scope Rule is bare of restraint insofar as Carrier assignment of work is concerned. Carrier may not unilaterally assign the work to whomever it chooses (Third Division Awards 3744, 3746, 11072 and Public Law Board No. 2035, Award 1).

It is the position of the Carrier that the Organization has failed to demonstrate how Rule 1 of the Agreement has been violated, nor has it presented any evidence that a violation occurred. Rather, the Carrier maintains that the Organization has made nothing more than mere assertions and has utterly failed in its responsibility to develop its burden of proof. Moreover, the Maintenance of Way employee concerned is simply the liaison employee in the Material Management Department at the Bear, Delaware, facility. He reviewed M/W purchase requests and interacted with various vendors. The Carrier asserts that the review and ordering of material is not the exclusive work of TCU employees, nor is there anything on the record that would demonstrate that the

ordering and review of material requisitions belongs historically, traditionally and exclusively on a system-wide basis to TCU-represented employees. The Carrier insists that employees of other crafts and management employees have traditionally handled material requisitions, quotation bid forms, and ordered material, and no claims were filed.

This Board is in agreement with the Organization that, even under a Scope Rule that is general in nature, the Carrier's freedom to assign work traditionally performed by the covered craft to other employees is not untrammelled. In this case, however, the Organization has failed to sustain its burden of persuasion. While it clearly disagrees with the Carrier's characterization of the ubiquitousness of the work at issue, the Organization has not presented any evidence on this record which would support its assertion that the work in question has been historically performed by only those employees covered by the TCU Agreement. Accordingly, the Board has no basis upon which to sustain the instant claim.

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 13th day of August 1997.